

No. 69929-6

**COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON**

In re the Testamentary Trust of Giuseppe Desimone

**DALE COLLINS, a married man,
Appellant/Cross Respondent,**

v.

**BNY MELLON, N.A., JOSEPH R. DESIMONE and RICHARD L.
DESIMONE, JR., in their capacities as co-Trustees of the
TESTAMENTARY TRUST OF GIUSEPPE DESIMONE,
BENJAMIN DANIELI, as Personal Representative of the Estate of
Jacqueline Danieli, KAREN DANIELI, LIZA TAYLOR, and MARIA
DANIELI, Beneficiaries,
Respondents/Cross Appellants.**

**BRIEF of RESPONDENT/CROSS-APPELLANTS
BENJAMIN DANIELI, as Personal Representative of the Estate of
Jacqueline Danieli, KAREN DANIELI, LIZA TAYLOR and MARIA
DANIELI**

Deborah J. Phillips, WSBA No. 8540
DJPhillips@perkinscoie.com
Nicholas A. Manheim, WSBA No. 39858
NManheim@perkinscoie.com
PERKINS COIE LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Telephone: 206.359.8000
Facsimile: 206.359.9000

Attorneys for Benjamin Danieli, as
Personal Representative of the Estate of
Jacqueline Danieli, Karen Danieli, Liza
Taylor and Maria Danieli

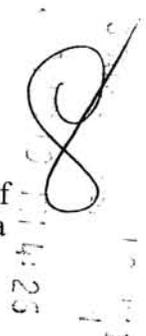
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TABLE OF CONTENTS

	Page
I. APPEAL AND ASSIGNMENT OF ERROR ON CROSS APPEAL.....	1
II. STATEMENT OF ISSUE ON APPEAL AND STATEMENT OF ISSUE RELATED TO ASSIGNMENT OF ERROR ON CROSS APPEAL.....	1
III. STATEMENT OF THE CASE.....	2
A. Giuseppe Desimone Drafted His Will to Provide for his Family and Maintain the Desimone Legacy.	3
B. Dale Collins' Belated Claim to Be a Member of Giuseppe's Family and a Trust Beneficiary Is Barred by the Statute of Limitations.....	7
1. Collins' Belated Claim.....	8
2. Collins' Time-Barred Claim	9
C. Fees	10
IV. ARGUMENT	10
A. Standard of Review.....	10
B. As Giuseppe Desimone Intended, His Will Must Be Interpreted And Administered Under the Law of the 1940s.....	10
1. Giuseppe Intended the Terms in His Will, Including the Term "Issue," to Have The Technical, Legal Definition That Existed at the Time He Executed the Will.....	10
2. Only Children Born in Wedlock Were "Issue" as a Matter of Law In 1946, so Collins Cannot Be a Beneficiary of Giuseppe's 1946 Trust.	15

TABLE OF CONTENTS
(continued)

	Page
C. The 1946 “Law of Succession” Precludes Any Claim by Collins to Be a Beneficiary of Giuseppe’s Trust	27
D. Under Any Law Governing Paternity, Collins’ Claims Are Time- Barred.....	30
E. The Trial Court Abused Its Discretion When It Denied the Danieli Beneficiaries’ Request for Fees.	34
V. CONCLUSION.....	36
APPENDIX A CHANGES IN “ACKNOWLEDGMENT RULE” FOR “ILLEGITIMATE CHILDREN” UNDER WASHINGTON LAW.....	
APPENDIX B PROVING PATERNITY UNDER WASHINGTON LAW	

TABLE OF AUTHORITIES

	Page
CASES	
<i>Annan v. Wilmington Trust Co.</i> , 559 A.2d 1289 (Del. 1989)	19, 20
<i>Armijo v. Wessilius</i> , 73 Wn.2d 716, 440 P.2d 471 (1968).....	27
<i>Bock v. State</i> , 91 Wn.2d 94, 586 P.2d 1173 (1978).....	28
<i>Bower v. Bower</i> , 5 Wash. 225, 31 P. 598 (1892).....	18
<i>Bowles v. Denny</i> , 155 Wash. 535, 285 P. 422 (1930).....	17, 18
<i>Erickson v. Rienbold</i> , 6 Wn. App. 407, 493 P.2d 794 (1972).....	12
<i>Goldmyer v. Van Bibber</i> , 130 Wash. 8, 225 P. 821 (1924).....	26
<i>Gonzales v. Cowan</i> , 76 Wn. App. 277, 884 P.2d 19 (1994).....	31
<i>Haskell v. Wilmington Trust Co.</i> , 304 A.2d 53 (Del. 1973)	19, 20
<i>In re Baker's Estate</i> , 49 Wn. 2d 609, 304 P.2d 1051 (1957).....	16, 25, 29
<i>In re Barker's Estate</i> , 5 Wash. 390, 31 P. 976 (1892).....	18
<i>In re Beekman's Estate</i> , 160 Wn.2d 669, 160 P.2d 39 (1931).....	28, 29

TABLE OF AUTHORITIES
(continued)

	Page
<i>In Re Estate of Bergau</i> , 103 Wn.2d 431, 693 P.2d 703 (1985).....	11
<i>In re Estate of Black</i> , 116 Wn. App. 476, 66 P.3d 670 (2003), <i>aff'd</i> , 153 Wn.2d 152 (2004).....	35
<i>In re Estate of Elmer</i> , 91 Wn. App. 785, 959 P.2d 701 (1998).....	12
<i>In re Estate of Jones</i> , 152 Wn. 2d 1, 93 P.3d 147 (2004).....	35
<i>In re Estate of Moi</i> , 136 Wn. App. 823, 151 P.3d 995 (2006).....	18
<i>In re Estate of Niehenke</i> , 117 Wn.2d 631, 818 P.2d 1324 (1991).....	11
<i>In re Estate of Wright</i> , 147 Wn. App. 674, 196 P.3d 1075 (2008).....	10, 18, 20
<i>In re Gand's Estate</i> , 61 Wn.2d 135, 377 P.2d 262 (1962).....	24, 25, 29
<i>In re Irrevocable Trust of McKean</i> , 144 Wn. App. 333, 183 P.3d 317 (2008).....	35
<i>In re Korry Testamentary Marital Deduction Trust for Wife</i> , 56 Wn. App. 749, 785 P.2d 484 (1990).....	36
<i>In re Levas Estate</i> , 33 Wn.2d 530, 206 P.2d 402 (1949).....	12
<i>In re M.K.M.R.</i> , 148 Wn. App. 383, 199 P.3d 1038 (2009).....	33
<i>In re Parentage of C.S.</i> , 134 Wn. App. 141, 139 P.3d 366 (2006).....	32

TABLE OF AUTHORITIES
(continued)

	Page
<i>In re Parentage of M.S.</i> , 128 Wn. App. 408, 115 P.3d 405 (2005).....	32, 33
<i>In re Price's Estate</i> , 75 Wn.2d 884, 454 P.2d 411 (1969).....	12, 23
<i>In re Price's Estate</i> , 75 Wn.2d 884, 454 P.2d 411 (1969).....	11
<i>In re Rohrer</i> , 22 Wash. 151, 60 P. 122 (1900).....	29
<i>In re Sollid</i> , 32 Wn. App. 349, 647 P.2d 1033 (1982).....	passim
<i>Laue v. Elder</i> , 106 Wn. App. 699, 25 P.3d 1032 (2001).....	35
<i>Matter of Estate of Henke</i> , 117 Wn.2d 631, 818 P.2d 1324 (1991).....	11
<i>Matter of Estate of Mell</i> , 105 Wn.2d 518, 716 P.2d 836 (1986).....	11, 12
<i>Matter of Estate of Sherry</i> , 40 Wn. App. 184, 698 P.2d 94 (1985).....	31
<i>Newman v. Veterinary Bd. of Governors</i> , 156 Wn. App. 132231 P.3d 840 (2010).....	28
<i>Newman v. Wells Fargo Bank</i> , 14 Cal. 4th 126 (Cal. 1996).....	24
<i>Peerless Pacific Co. v. Burckhard</i> , 90 Wash. 221, 155 P. 1037 (1916).....	26, 27
<i>Pitzer v. Union Bank of California</i> , 141 Wn.2d 539, 9 P.3d 805 (2000).....	16, 25, 27, 28

TABLE OF AUTHORITIES
(continued)

	Page
<i>Rhay v. Johnson</i> , 73 Wn. App. 98, 867 P.2d 669 (1994).....	14
<i>State v. Douty</i> , 92 Wn.2d 930, 603 P.2d 373 (1979).....	32
<i>Watson v. Baker</i> , 829 N.E.2d 648 (Mass. 2005).....	23
<i>Will of Hoffman</i> , 385 N.Y.S.2d 49, 53 A.D.2d 55 (N.Y. App. Div. 1976).....	18, 19
 STATUTES	
Del. Code Ann. tit. 12 § 213	20
Laws 1919, Ch. 203, § 1	9
Laws 1965, Ch. 145, § 11.99.015	16
Laws 1975-76, 2d Ex. S., Ch. 42, Sec. 7, 24, 41	30
Laws 1983, Ch. 41, § 5	9
Laws 2002, Ch. 302, § 507 (amended 2011).....	31, 33
RCW 11.02.005(8).....	17
RCW 11.12.230	11
RCW 11.96.140	35
RCW 11.96A.....	35
RCW 11.96A.150.....	2, 4, 10
RCW 11.96A.150(1).....	36
RCW 26.26.116(1)(a)	33

TABLE OF AUTHORITIES
(continued)

	Page
RCW 26.26.116(2).....	33
RCW 26.26.530(a).....	31
RCW 26.26.545	31
RCW 26.26.904	33
Rem. Rev. Stat. § 1326	18
Rem. Rev. Stat. § 1345	24, 25, 28, 29
Rem. Rev. Stat. § 1354	passim
 OTHER AUTHORITIES	
D. Lawrence, <i>An Introduction to TEDRA</i> , Washington State Bar Association CLE (1999), Chapter 1, "History and Overview of the Trust and Estate Dispute Resolution Act of 1999"	35
RAP 2.5(a)	28
RAP 18.1	36

I. APPEAL AND ASSIGNMENT OF ERROR ON CROSS APPEAL

A. Benjamin Danieli, as Personal Representative of the Estate of Jacqueline Danieli, Karen Danieli, Liza Taylor, and Maria Danieli (the “Danieli Beneficiaries”) seek affirmance of the trial court’s Order Granting Co-Trustees’ and Danieli Parties’ Motions for Summary Judgment.

B. Whether Appellant is barred by the statute of limitations from asserting a paternity claim, providing an alternative legal basis for affirmance of the trial court’s order of dismissal?

C. The Danieli Beneficiaries assign error to the trial court’s March 11, 2013 Order Denying Danieli’s Motion for Award of Fees and Denying Motion to Strike. CP (70094-4) 250.¹

II. STATEMENT OF ISSUE ON APPEAL AND STATEMENT OF ISSUE RELATED TO ASSIGNMENT OF ERROR ON CROSS APPEAL

A. Whether a will executed in 1943 and subject to probate following decedent’s 1946 death was properly interpreted by the trial court

¹ Separate notices of appeal were filed by Dale Collins and the Trustees and Danieli Beneficiaries. Clerk’s papers were designated by the parties and separately indexed. The Danieli Parties will refer to Clerk’s Papers designated by the Trustees and Danieli Parties as “CP (70094-4) 1” etc., as requested by the Clerk’s office.

to exclude an illegitimate child² from being a beneficiary of the testamentary trust created by the will?

B. Whether a putative child can claim an interest in a testamentary trust through his alleged father when the statute of limitations has run on any paternity claim?

C. Whether, under RCW 11.96A.150, trust beneficiaries are entitled to the fees and costs incurred in successfully defending against a claim brought by an individual determined, as a matter of law, not to be a beneficiary of their trust?

III. STATEMENT OF THE CASE

In November 1943, Giuseppe Desimone executed a will that established a trust to provide for the Desimone family and to keep in his family's control the property he and his wife, Assunta, had acquired in and around Seattle during their lives. CP 52. More than sixty years later, Dale Collins, who grew up in Alaska with his mother and father, Josephine and Orville Collins, and a brother and is now 64 years old, claims he was born out of wedlock to one of Giuseppe's sons and is entitled to be a beneficiary of Giuseppe's Trust. CP 1-10. Collins³ cannot be a beneficiary of the Trust because it is undisputed that his mother was never

² No disrespect is intended by the use of "legitimate" and "illegitimate" in this brief and the terms are used for the sake of clarity.

³ The parties will be referred to by first or last names, for convenience sake.

married to Giuseppe's son and therefore Collins cannot be an "issue" under Giuseppe's will. In addition, any claim to establish paternity is time-barred. The trial court correctly dismissed Collins' claim and the trial court's order should be affirmed. CP 359.

A. Giuseppe Desimone Drafted His Will to Provide for his Family and Maintain the Desimone Legacy.

Giuseppe Desimone was born in Italy and immigrated to the Seattle area where he worked as a farmer and, with his wife Assunta, raised their family. CP 41. Over time, their success allowed them to acquire considerable real estate holdings, including a substantial interest in the Pike Place Market where a plaque respecting Giuseppe's contributions remains today. CP 267-79. Giuseppe's Will, prepared three years before his death in 1946, established a testamentary trust so that upon his death the Desimone real estate holdings would be kept in the family and provide for their welfare for generations. CP 52, 260. The Trust has done what Giuseppe intended, providing for his five children, their children, and their children and maintaining the Desimone family as a fixture in the Seattle community.

Giuseppe Desimone ensured that his property would remain in the family by sharing the property equally with his wife and specifically limiting the beneficiaries of his Trust to his children, their "issue," and

their “issue.” CP 42-43. In his Will, Giuseppe directed that income from his Trust would be “annually divided between and paid to my children aforesaid.” CP 42. He further provided that “in the event that any of my said children shall die leaving issue (my grandchildren) surviving them, then the share of income to which such child would have been entitled if alive shall” go to “its issue.” *Id.* A similar provision provided for Giuseppe’s “issue (my great-grandchildren).” *Id.*

Giuseppe drafted and executed his Will with the assistance of his attorney, S. Harold Shefelman. CP 52. At the time Giuseppe executed his Will and at the time of his death, “issue” was defined by statute to mean “all the lawful lineal descendants of the ancestor.” Rem. Rev. Stat. § 1354. This included only descendants born in wedlock, and did not include children born outside of wedlock. By using “issue” to define the Trust beneficiaries, Giuseppe expressed his intent to restrict the Desimone legacy to his children, the children of any of his five children who married and had families, and so on through the generations. The Danieli Beneficiaries are third and fourth generation beneficiaries of Giuseppe and Assunta’s legacy.

Other provisions in the Will reflect Giuseppe Desimone’s intent to provide for his family while fostering its traditions. He selected two of his sons, Ralph and Richard, to serve as co-trustees along with

Mr. Shefelman, and named the order in which his other children would serve if Ralph and Richard did not serve. CP 41, 44. He directed that two of his direct descendants should always serve as trustees. CP 44. And he further provided that his children would serve as trustees without compensation. *Id.*

Giuseppe Desimone's dedication to his family and desire that they maintain their familial ties is evident in other provisions of his Will. To encourage his five children to maintain a connection to their Italian heritage, he left \$10,000 to each child who would visit the ancestral village outside Naples, Italy from which he and Assunta had emigrated. CP 41-42. For twenty years after his death, the family's South Park church, Church of Our Lady of the Lourdes, was to receive \$250 to defray all or part of the cost of an annual fiesta. CP 41. He left the same bequest to the church he attended as a youth, the Church of Passo Melabella Azalomo in the Italian town where he was born. *Id.* He provided for his wife "to live in comfort the remainder of her life" through her share of the real estate they had accumulated together as community property. CP 40-41. Finally, he directed that his real estate remain in the family trust, rather than be sold. CP 46. He specifically provided, "I have chosen the land which I own carefully, and wish it to be retained . . . This is also true of my shares of stock in the Pike Place Public Markets, Inc." *Id.*

The Will's distribution of shares of the Trust further shows that Giuseppe Desimone wanted his family to protect and continue the Desimone legacy. The Will provided that his children's "issue" would receive the shares to which their parents were entitled, but "on the basis of one portion thereof to each male issue and one half portion thereof to each female issue." CP 42. He made a similar provision to distribute the shares for his children who might die "leaving no issue"; their shares would be divided amongst the survivors of the five children, again with "one portion thereof for each male child and one half-portion thereof for each female child." *Id.* Though arguably unfair by contemporary standards, Giuseppe's stated direction that male and female issue receive different portions is consistent with traditional mores of the 1940s that sons would need to provide for their families, and daughters would need less, either because they remained unmarried or if they married, would be provided for by their husbands.

Giuseppe and Assunta had five children, each named in the Will: Pete, Mondo, Ralph, Richard, and Rose. CP 40. Of Giuseppe's and Assunta's children, two (Rose and Ralph) died "leaving no issue." Their other children have also passed away, with Pete survived by his daughter Suzanne Hittman, Richard survived by his sons Joseph and Richard Jr., and Mondo survived by his daughter Jacqueline Danieli. Jacqueline

passed away in June 2012, and is survived by six daughters, now beneficiaries of Giuseppe Desimone's Trust. CP 33, 123. The Trust Giuseppe created has been in existence since his death in 1946, owning and managing real estate in King County and providing for Giuseppe Desimone's children and their issue over the last sixty years.

B. Dale Collins' Belated Claim to Be a Member of Giuseppe's Family and a Trust Beneficiary Is Barred by the Statute of Limitations.

Collins alleges he has been aware since 2001 that the man who raised him and claimed to be his father for more than fifty years did not believe he was Collins' biological father. It was another decade before Collins, at the age of sixty-three, filed a Petition claiming to be a beneficiary of Giuseppe's Trust, basing his claim on an allegation that Giuseppe's son Armondo Desimone was his biological father. In his Petition he alleges he is "the grandson of Giuseppe and Assunta Desimone" and the son of Armondo Desimone, a claim he repeats often before this Court. CP 2. Yet he did not seek in the *Petition* to have paternity established⁴, that claim has never been established and is in fact time-barred. *See* Section IV.C & IV.D *infra*.

⁴ Collins sought an order that he was the "issue of Giuseppe Desimone", failing to seek any legal determination to establish a paternity claim involving Mondo Desimone. CP 7-8.

1. Collins' Belated Claim

Collins was born on April 13, 1949, in Kodiak, Alaska. CP 31. Josephine Collins is his mother, and her husband, Orville, and Josephine's names appear on Collins' birth records. CP 31, 64. Orville raised Collins as his own son. CP 31. As Collins admits, throughout his childhood and nearly all his adult life, throughout his parents' decades-long marriage, and for thirty years after his parents divorced, he had no reason to believe Orville was not his biological father. *Id.* According to Collins, that changed in 2001 when Orville told him that he might not be Collins' biological father.⁵ *Id.* Orville explained to Collins what he had been told, specifically that Josephine, while married to Orville, had become pregnant during the summer of 1948 when she lived and worked in Seattle and he had worked in Alaska. *Id.* Orville shared the family information about who was believed to be Collins' biological father. Despite receiving this news and the family information about his alleged biological father, Collins did nothing to investigate. *Id.*

According to Collins, in 2003 he and Orville submitted to DNA testing. CP 32. This test led Collins to believe that Orville was not his biological father. *Id.* Nonetheless, Collins again did nothing.

⁵ The Danieli Beneficiaries objected to the hearsay contained in Collins' declarations and Michael Baird's declaration. CP 225. The trial court did not rule on this objection, and did not consider the substance of the declarations in dismissing the claim. RP 49-51.

It was not until four years later, in 2007, that Collins asked his mother if Orville was his biological father. CP 32. Josephine affirmed that Orville was indeed Collin's biological father but then changed her story. *Id.* At that point Collins hired someone to find the identity of the man believed to be his biological father. *Id.* Within a year, Collins came to believe that Giuseppe's son, Mondo Desimone, was his biological father. CP 32-33. It was years later still, after learning that Giuseppe had created a trust, that Collins pursued legal action, filing a Petition for a share of that trust. CP 1.

2. Collins' Time-Barred Claim

From 1919, Washington has had statutory procedures to establish paternity. *See* Laws 1919, Ch. 203, Sec. 1; Appendix A, B. At no time has a claim ever been brought to establish Collins' paternity; Orville Collins was the father listed on Dale Collins' birth certificate and he remains Dale Collins' presumed father. CP 64.

In 1975, the legislature adopted the Uniform Parentage Act and repealed Washington's 1919 filiation statute. *See* Laws 1975 - 76, 2d Ex. S. Ch.42, Sec. 7, 41. As of 1975, a claim could be brought by "any interested party" "at any time". In 1983, the legislature amended the Uniform Parentage Act and left intact the ability for a claim to be brought at any time. Laws 1983, Ch. 41, Sec. 5. In 2002, the statute was amended

again, limiting the time within which Collins could bring a claim to two years. Laws 2002, Ch. 302, Sec. 506, 507. Collins did not file a claim to establish paternity within two years of that statutory change. His claim is now time barred. This failure to bring a claim within the statutory period permitted for paternity claims is a second, and an alternative basis, upon which this Court should affirm the dismissal of Collins' claim.

C. Fees

The Trustees and Danieli Beneficiaries moved for an award of attorneys' fees under the equitable provisions of RCW 11.96A.150 upon the dismissal of Collins' claims. CP (70094-4) 6, 65. Their motions were denied. CP (70094-4) 247, 250. They appealed. CP (70094-4) 253.

IV. ARGUMENT

A. Standard of Review

This matter was decided by the trial court on competing motions for summary judgment. On appeal, this Court's review is *de novo*. *Estate of Wright*, 147 Wn. App. 674, 680, 196 P.3d 1075 (2008).

B. As Giuseppe Desimone Intended, His Will Must Be Interpreted And Administered Under the Law of the 1940s.

1. Giuseppe Intended the Terms in His Will, Including the Term "Issue," to Have The Technical, Legal Definition That Existed at the Time He Executed the Will.

Three bedrock principles of testamentary construction make it clear that Dale Collins is not a Trust beneficiary and not entitled to any

distributions from the Trust. The first is the fundamental principle that a will must be construed to effect the testator's intent. The second is the rule that the terms in a will have the meaning they had at the time of its execution. The final principle is that technical legal terms in a will be given their technical legal meaning. Thus, to effect Giuseppe Desimone's intent, the technical legal terms in Giuseppe's Will must have the legal meaning they had when the Will was executed in 1943.

It is a central tenet of Washington probate law that "[a]ll courts and others concerned in the execution of last wills shall have due regard to the direction of the will, and the true intent and meaning of the testator."

RCW 11.12.230. "The paramount duty of the court is to give effect to the testator's intent." *In Re Estate of Bergau*, 103 Wn.2d 431, 435, 693 P.2d 703 (1985); *see also In Re Estate of Niehenke*, 117 Wn.2d 631, 639, 818 P.2d 1324 (1991) ("The primary duty of a court when interpreting a will is to determine the intent of the testator").

Consistent with this principal, the terms in a will must be interpreted to have the meaning they had when written. *See Matter of Estate of Mell*, 105 Wn.2d 518, 524, 716 P.2d 836 (1986) (citing *Bergau*, 103 Wn.2d at 436). *See also Matter of Estate of Henke*, 117 Wn.2d 631, 640-41, 818 P.2d 1324 (1991) (decendent who left will presumed to be aware of applicable law when will executed); *In re Price's Estate*, 75

Wn.2d 884, 454 P.2d 411 (1969) (court to consider surrounding circumstances of will, objectives of will and what testator intended); *In re Levas Estate*, 33 Wn.2d 530, 536, 206 P.2d 402 (1949) (“the testator’s intention is to be determined as of the time of execution of the will”); *In re Estate of Elmer*, 91 Wn. App. 785, 789, 959 P.2d 701 (1998) (testator’s intentions viewed through surrounding circumstances at the time will executed). Collins fails to address these consistent court holdings while urging the Court to jettison this long-standing principal of will and trust construction.

In particular, courts presume that the testator intended technical, legal terms not otherwise defined in a will to have their technical, legal meaning. “The testator is presumed to have known the law at the time of execution of his will.” *Mell*, 105 Wn.2d at 524; *see also Elmer*, 91 Wn. App. at 789. And “[t]echnical words in a will are presumed to be used in their legalistic sense.” *Erickson v. Rienbold*, 6 Wn. App. 407, 420, 493 P.2d 794 (1972). Thus, technical terms in a will must be construed according to the legal meaning they had at the time the will was executed.

Collins acknowledges that implementing Giuseppe’s intent is the Court’s “paramount duty,” but he then asks the Court to disregard Giuseppe’s intent and interpret his Will as though it were written today. *Compare* Appellant’s Br. at 6, 9. There is no precedent for taking this

drastic step, and the cases cited by Collins do not support changing the law as he advocates. Rather, the Court should give effect to Giuseppe's intent and find that Collins is not a trust beneficiary.

Collins cites *In re Sollid*, 32 Wn. App. 349, 647 P.2d 1033 (1982), as support for his attempt to change the law. Appellant's Br. at 9. But, in doing so, Collins turns the holding in *Sollid* on its head. *Sollid* considered whether an adopted person was the intended beneficiary of a trust, not whether testators intended illegitimate children to be included as trust beneficiaries. The court recognized that adoption and the status of adopted children have a unique history that has moved toward treating adopted and natural born children equally. *See Sollid*, 32 Wn. App. at 352 (1982) (describing history of adoption). The court then set forth the policy that motivated this evolution and that ultimately controlled its decision: "[I]t is not the biological act of begetting offspring . . . but the emotional and spiritual experience of living together that creates a family. The family relationship is created far more by love, understanding, and mutual recognition of reciprocal duties and bonds, than by physical genesis." *Sollid*, 32 Wn. App. at 352 (internal quotation marks and citation omitted). The court concluded that the testators' intent reflected this policy and that adopted children raised in the family were intended to be trust beneficiaries. Thus, the Court in *Sollid* held that for the trust at issue,

individuals connected by familial relationships based on reciprocal duties and bonds, not blood, were lawful trust beneficiaries. It did not, as Collins contends, hold that modern legal standards should be incorporated into all trusts, regardless of the testator's intent or the time the trust was created and became irrevocable.

The later case of *Rhay v. Johnson* confirmed this interpretation. 73 Wn. App. 98, 867 P.2d 669 (1994). The court in *Rhay* examined *Sollid* and held that the adopted child claiming inheritance in *Rhay* was not an intended beneficiary because "there was none of the love, understanding and mutual recognition of reciprocal duties and bonds normally associated with" a familial relationship. *Id.* at 106. The court concluded by clarifying that "[i]t is neither possible nor desirable to establish a hard and fast rule regarding the legal status of adopted children in these will disputes. Courts must look to the intention of the testator and the facts surrounding the particular adoption." *Id.*

Contrary to Collins' contention, *Sollid* and *Rhay* explain that a focus on familial ties, not blood relations, motivated the liberalization of the rules governing inheritance by adopted children. No similar policy applies to children born out of wedlock, especially someone such as Collins whose mother claimed was the child of her marriage to Orville Collins for more than fifty years, continuing until after until after the death

of Mondo Desimone, his alleged biological father. Collins shares none of the familial bonds with the Desimone family that the courts in *Sollid* and *Rhay* sought to protect. Thus, there is no reason to change the law and disregard Giuseppe's intent in the context of his will, executed in 1943, which became irrevocable upon his death three years later.

2. Only Children Born in Wedlock Were "Issue" as a Matter of Law In 1946, so Collins Cannot Be a Beneficiary of Giuseppe's 1946 Trust.

Collins admits he is not a legitimate child born to his mother Josephine Collins and to Mondo Desimone. CP 31. In 1946, "issue" was defined by statute to include only children born to married parents, and under Giuseppe's Will, only "issue" qualify as beneficiaries. Giuseppe's Will begins,

I have five children, four sons and one daughter, Pete, Mondo, Fiorello (who is usually called Ralph and who will be referred to hereinafter as Ralph), Rizura (who is usually called Richard and who will be referred to hereinafter as Richard), and Rosolina (who is usually called Rose and who will hereinafter be referred to as Rose).

CP 40. After directing certain specific bequests, Giuseppe then directed that his named children were to receive income from the Trust throughout their lives. If a child died without issue, as two of his children did, they had no power to direct the disposition of any of Giuseppe's assets. But if his named children died "leaving issue (my grandchildren)" then the

child's share would be paid to "its issue." CP 42. The Will further provided that if "any of my grandchildren shall die leaving issue (my great-grandchildren)," then the deceased grandchild's share would be paid to the grandchild's "issue, my great-grandchildren." *Id.* Thus, only "issue" are entitled to annual distributions of Trust income.

Under the law in 1946, "issue" included only legitimate children. "Issue" was defined by statute in 1946 to mean "all the lawful lineal descendants of the ancestor." Rem. Rev. Stat. § 1354. This continued to be the law in Washington until 1965. *See* Laws 1965, Ch. 145, § 11.99.015; *Pitzer v. Union Bank of California*, 141 Wn. 2d 539, 542, 9 P.3d 805 (2000) (law in effect until 1965 provided that illegitimate children would not inherit from father's estate absent signed, witnessed acknowledgment of paternity by father); *In re Baker's Estate*, 49 Wn. 2d 609, 304 P.2d 1051 (1957) (unacknowledged illegitimate child not a pretermitted child under father's will). Thus, as used in Giuseppe's will, "issue" meant only descendants born to married parents.

Collins does not contest that for intestate succession Washington law required, and case law consistently confirmed, that illegitimate children did not inherit from their fathers, absent compliance with statutory requirements. Appellant's Brief at 7-8. Collins asserts instead that this Court should impose a different definition of "issue" for wills and

trusts, and relies upon dicta in *Bowles v. Denny*, 155 Wash. 535, 541, 285 P. 422 (1930), in an effort to establish a definition for “issue” that is contrary to the statutory definition and case law holdings. In *Bowles*, the court decided which generations should be included as beneficiaries under a testamentary trust by determining whether the interests of a child who predeceased the testatrix were vested or contingent. 155 Wn. at 540. The court referred to the term “issue” in the will to determine whether it referred to a specific generation of descendants; it never considered whether “issue” included illegitimate children. In that context, the court concluded that “issue” referred to descendants of all generations, not one specific generation. Thus, *Bowles* provides no support for the contention that Washington law, in 1943, had redefined “issue” to include illegitimate children when that term was used in a will or trust, while leaving intact a different definition clearly set out by statute.

Bowles has not been cited by a Washington court in the more than 80 years since it was decided, and Washington statutory provisions on the subject of whether illegitimate children could inherit on the same footing as children born to their married parents remained unchanged for decades after the decision. Collins acknowledges that it was not until 2005 that the state legislature deleted the word “lawful” from the definition of “issue” as “lineal descendants” in RCW 11.02.005(8). Appellant’s Br. at 12, n.4.

Bowles is unpersuasive as a foundation to establish a definition of “issue” in testamentary documents that is at odds with all other authority in Washington applicable to a document executed in the 1940s. Collins also fails to note that under Rem. Rev. Stat. § 1326, if a parent left a will, but failed to provide for his child, that the unnamed child, or its descendants, “shall be entitled to such proportion of the estate of the testator . . . as if he had died intestate” See *Bower v. Bower*, 5 Wash. 225, 31 P. 598 (1892); *In re Barker’s Estate*, 5 Wash. 390, 31 P. 976 (1892); see also *In re Estate of Moi*, 136 Wn. App. 823, 151 P.3d 995 (2006) (if will fails to provide for spouse, spouse receives amount as if decedent died intestate). These cross references between statutes governing estates governed by wills and those governed by the laws of intestacy demonstrate that the definition of “issue” that Collins concedes existed in the 1940’s applies to Giuseppe’s trust.

Collins next urges the Court to adopt what he contends are holdings from other states. In *In re Estate of Wright*, 147 Wn. App. at 682, the court looked to decisions in other jurisdictions to help it construe the adjective “lawful” used in the will at issue.. Nothing in the *Wright* opinion suggests that the court intended to incorporate *Will of Hoffman*, 385 N.Y.S.2d 49, 53 A.D.2d 55 (N.Y. App. Div. 1976), in its entirety or that the decision should be binding in Washington. *Will of Hoffman* held

that New York would no longer apply a common law presumption that “issue,” when used in a will, referred only to people born to married parents. 385 N.Y.S.2d at 51. In more than thirty years since the decision in *Will of Hoffman*, no other Washington case has relied upon the case. The definition of “issue” under New York law in the 1970’s has no relevance or precedential import for Giuseppe’s intended meaning of “issue” under Washington law in 1943.

Collins also seeks refuge under Delaware cases, to no avail. He cites to *Haskell v. Wilmington Trust Co.*, 304 A.2d 53 (Del. 1973) and *Annan v. Wilmington Trust Co.*, 559 A.2d 1289, 1290 (Del. 1989) as authority that “the term ‘issue’ and ‘lineal descendants’ include illegitimates who can prove paternity.” Appellant’s Br. at 7. He fails to note that the issue in *Annan* was governed by Quebec law, not Delaware law. And he fails to note that the court in *Annan* held that an illegitimate child could inherit from the father only if paternity were established as provided under state law, requiring either the marriage of the parents or an establishment of paternity before the death of the father.⁶ Thus Delaware law does not hold that “issue” automatically includes all illegitimate children. Finally, Collins fails to note that under Delaware law, absent

⁶ That statutory scheme would be fatal to a claim like Collins’, and as explained *infra* in Sections IV.C & IV.D, Collins is barred from establishing paternity under Washington law.

express provisions in a will or trust to the contrary, “determination of a class shall be governed by the law in effect on the date the will or trust instrument becomes irrevocable,” a legislative change made to overturn the *Haskell* decision. *Annan v. Wilmington Trust Co.*, 559 A.2d at 1292, n.2; Del. Code Ann. tit. 12 § 213. Delaware law thus would require that the law in effect in 1946, when Giuseppe’s trust became irrevocable, be applied, and that law bars Collins’ claim.

a. Other Provisions of The Will Support the Court’s Decision that Giuseppe Intended Only His Legitimate Descendants to Benefit from the Trust.

Courts interpret the testator’s intent by “consider[ing] the entire will and giv[ing] effect to every part.” *Wright*, 147 Wn. App. at 681 (citation omitted). Giuseppe’s Will includes many provisions that show he intended to encourage familial ties between future generations of his family and to provide for those who shared in the Desimone family traditions and legacy.⁷ As Washington courts have recognized, “it is not the biological act of begetting offspring . . . but the emotional and spiritual experience of living together that creates a family. The family relationship

⁷ Assunta Desimone long outlived her husband, and she revised her Irrevocable Living Trust in 1974. CP 103-113. Her trust document reflect some changes, such as eliminating the “full shares” for male issue and “half shares” for female issue. Her document defines “children” as “lawful children by birth”, prefaces the terms “children, grandchildren, greatgrandchildren and the like” with the word “lawful”, and uses the term “lawful lineal descendants” repeatedly.

is created far more by love, understanding, and mutual recognition of reciprocal duties and bonds, than by physical genesis.” *Sollid*, 32 Wn. App. at 352 (internal quotation and citation omitted). Giuseppe’s Will shows that he meant to encourage these familial duties and bonds and share his legacy within those confines.

First, Giuseppe left gifts to his children to encourage them to continue their connection with the parents’ heritage. Pride in his Italian heritage is evident by the substantial gifts to each of his children if they would travel to the Italian town where he and Assunta were born. He left annual donations to his childhood village church in Italy and his family’s church in Seattle, encouraging his family to continue their traditions and connection to these religious institutions. CP 41. He directed that his children would serve as trustees, and later their issue, so that family members would always govern the real estate holdings he had specifically acquired and directed be maintained. CP 41, 44. Giuseppe provided for his wife through leaving her to own and manage with their children the real property acquired throughout their marriage. CP 40-41. He directed his children, as trustees, and implicitly his wife, to hold that property and not sell it. CP 46. By putting all the real estate in trust, and keeping it in trust until 21 years after the death of his grandchildren who were then

living, he clearly meant to keep his wealth within his family for generations.

Second, Giuseppe's instructions regarding distributions to male and female issue further show his intent to encourage traditional families who would continue the Desimone legacy. Giuseppe gave male "issue" twice as much income as female "issue." CP 42-43. This preference demonstrates Giuseppe's traditional paternalistic values regarding family, and the expectation that his female children and issue would be provided for by their husbands, or not marry and need less than his male children and issue.

Third, Giuseppe identifies his children by name, and then speaks of their "issue", followed by reference to their "issue". He uses the term "issue" repeatedly in his Will, reverting to that term dozens of times. Giuseppe's Will then often follows the term "issue" with a parenthetical reference to a more common or non-technical description--"my grandchildren" or "my greatgrandchildren." For example, the Will states that "[i]n the event that any of my said children die leaving issue (my grandchildren) . . . , then" CP 42. Similarly, the Will states that "[i]n the event that any of my grandchildren die leaving issue (my great-grandchildren) . . . , then" *Id.* This parenthetical, layman's use of "grandchildren" and "greatgrandchildren" does not eliminate the technical

definition of “issue”. Rather, these terms become shorthand for the “issue of my issue” (grandchildren) and the “issue of the issue of my issue” (great-grandchildren”). They refer to different generations of “issue” and avoid the awkwardness of using terms like “issue of the issue of my issue,” which Giuseppe would have had to use if he had not included shorthand terms in parentheses.

Finally, Giuseppe’s Will indicates that it was drafted with the assistance of Giuseppe’s attorney, S. Harold Shefelman.⁸ Mr. Shefelman was also named as the sole non-family member to serve as an individual trustee, serving along with two of Giuseppe’s sons and The National Bank of Commerce, with Mr. Shefelman to serve so long as he was willing and able. CP 41, 44.

The role of an attorney in drafting the trust provides further support for the conclusion that Giuseppe understood the legal definition of “issue” and intended the term to have that meaning. CP 52. *See Price*, 75 Wn.2d at 888 (where attorney helped prepare a will, “attorney . . . presumably advised the testator of the law of intestacy”); *Watson v. Baker*, 829 N.E.2d 648, 652 (Mass. 2005) (“When a will is drafted by a person familiar with the accurate use of legal terms, it is presumed that the legal

⁸ Mr. Shefelman was a prominent Seattle attorney, and served as President of the Washington State Bar Association from 1937 – 1938. <http://www.kcba.org/aboutkcba/pastpresidents.aspx>

terms were used correctly and with the intent that they be interpreted in conformity with the law”) (internal quotation marks and citation omitted); *Newman v. Wells Fargo Bank*, 926 P.2d 969, 975, 59 Cal. Rptr. 2d 2 (Cal. 1996) (“This presumption is strongest when an attorney has drafted the will because where an instrument has been drawn by one skilled in the law, the presence of legal and technical terms is an indication that the legal term of art has been used”) (internal quotation marks and citation omitted).

b. The Principles Governing Probate Law in 1946 Also Show that Giuseppe Intended to Include Only Legitimate Children as Trust Beneficiaries.

At the time Giuseppe Desimone executed his Will, numerous legal principles provided for inheritance by legitimate children only, absent affirmative steps by a father to acknowledge a child. Similarly, inheritance through maternal lines was limited for children born outside of marriage. *See* Appendix A, B. As explained above, Giuseppe’s Will reflects this preference, and nothing in the Will shows that Giuseppe intended to contravene the prevailing probate principle that only legitimate children inherit. As discussed further below, when Giuseppe executed his Will in 1943, the rules of intestate succession did not allow a child born to unmarried parents to inherit from the child’s out of wedlock father. Rem. Rev. Stat. § 1345; *see also In re Gand’s Estate*, 61 Wn.2d 135, 135, 377 P.2d 262 (1962) (same statutory standard that existed in 1943 did not

permit child born out of wedlock to inherit from maternal aunt); *Pitzer*, 141 Wn.2d 539 (RCW 11.04.080, in effect until 1965, limited rights of inheritance from fathers to illegitimate children whose fathers had acknowledged paternity in a signed, witnessed writing.) For a person born out of wedlock to inherit from their father in 1943, the father had to acknowledge his paternity by signing a written acknowledgment in front of witnesses. Rem. Rev. Stat. § 1345; *see also Gand*, 61 Wn.2d at 135 n.1; *Baker*, 49 Wn.2d 609. This statute balanced societal interests including permitting paternity to be established for children whose parents were not married, allowing for fathers to acknowledge children before a time when scientific testing existed or was readily available to establish paternity, and societal values about marriage and having children in a married family setting. Nothing in Giuseppe's Will suggests that he intended to adopt a contrary position or include children born out of wedlock within his defined family. It is undisputed that no acknowledgement of paternity ever occurred by Mondo Desimone of Collins.

Moreover, even the term "child," variations of which are used in the Will, was understood to include only children born in wedlock in other circumstances. Since territorial days, Washington statutes have used the word "child" in various contexts. In interpreting one of these statutes, the

court noted, “[i]t is admitted that at common law the word ‘child’ in section 184 [the statute at issue in the dispute] . . . means ‘legitimate child’ only.” *Goldmyer v. Van Bibber*, 130 Wash. 8, 10, 225 P. 821 (1924). The question before the court then was whether a mother could bring suit for the injury or death of her illegitimate child. With regard to a mother, the rights of an illegitimate child were no different than a legitimate child as the result of statutes passed in 1875. The statute at issue in the case was enacted after that time, so the court interpreted the statute to permit the mother of an illegitimate child to bring suit. But in so doing, it noted that the rights of an illegitimate child vis-à-vis a father were different, and required following the statutory procedure for acknowledging the child as his own. Without that acknowledgement, “child” vis-à-vis a father still meant a “legitimate” child and excluded an illegitimate child.

This distinction was drawn again by the court in *Peerless Pacific Co. v. Burckhard*, 90 Wash. 221, 155 P. 1037 (1916). Mr. Burckhard and Elsie Warwick married in British Columbia in 1913 and had a child, but the court determined the marriage was not legitimate so their child was illegitimate. In ruling against the couple on an insurance claim, the court was required to interpret the term “child”, and noted

Where the word ‘child’, or ‘children’, is used in a statute, without qualifying words and where the context does not show a

contrary meaning, the general, if not the universal, construction is that the word ‘child’ or ‘children’ does not include an illegitimate child.

90 Wash. at 224.⁹

Thus, at the time Giuseppe Desimone executed the Will, even general terms such as “child” referred only to legitimate children and the default rule was that illegitimate children could not inherit from their alleged fathers without considerable evidence of paternity. Nothing in Giuseppe’s Will implies that he intended to contravene these principles or expand the class of descendants that would benefit from his Trust.

C. The 1946 “Law of Succession” Precludes Any Claim by Collins to Be a Beneficiary of Giuseppe’s Trust

Even if a court were to determine that Giuseppe’s Trust permits an illegitimate child to become a beneficiary, Washington’s “law of succession” bars Collins’ claim. The Washington Supreme Court has held that “[t]he date of a testator’s death generally governs the applicable law of succession.” *Pitzer*, 141 Wn.2d at 546. This rule ensures uniform administration of a will and testamentary trust. Specifically, it creates one standard by which trustees can forever determine who is a beneficiary and

⁹ Collins contends that *Peerless* should be dismissed in considering Giuseppe’s 1943 Will, and in interpreting the law in effect when his trust became irrevocable in 1946 because nearly 50 years after the decision, and more than 20 years after Giuseppe died, the case was overruled. *See Armijo v. Wessilius*, 73 Wn.2d 716, 440 P.2d 471 (1968). Until that time, however, it remained as precedent in Washington.

thereby treat all potential beneficiaries equally. Without this rule, trustees could never reach a final decision on who qualifies as a beneficiary. *See id.* at 554 (rejecting a rule because it “is antithetical to the underlying desirability of finality in [probate] cases.”)

Because Giuseppe died in 1946, the law of succession in effect at that time governs the administration of his testamentary trust.¹⁰ CP 260. In 1946, Washington’s law of succession included Rem. Rev. Stat. § 1345 governing the inheritance and succession of illegitimate children. Illegitimate children were considered heirs of their natural mothers but otherwise could not inherit from a person unless the person “in writing signed in the presence of a witness . . . acknowledged himself to be the father of such child.” Rem Rev. Stat. § 1345; *see also In re Beekman’s Estate*, 160 Wn.2d 669, 160 P.3d 39 (1931) (claim to inherit by illegitimate child denied because alleged written acknowledgment was inconclusive). The statute further provided that an illegitimate child “shall not be allowed to claim, as representing his father or mother, any part of

¹⁰ The trial court did not dismiss Dale Collins’ claims on these grounds, but the Court of Appeals can affirm trial court decisions on alternate grounds supported by the record. *See* RAP 2.5(a); *see also Bock v. State*, 91 Wn.2d 94, 95 n. 1, 586 P.2d 1173 (1978) (“we will affirm a judgment if there are alternative grounds presented by the pleadings and record which support the decree”), *Newman v. Veterinary Bd. of Governors*, 156 Wn. App. 132, 143, 231 P.3d 840 (2010) (“we may affirm the decision of the court below if there are alternative grounds presented by the pleadings and the record which support that court’s order”).

the estate of his or her kindred, either lineal or collateral, unless before his death his parents shall have intermarried, and his father, after such marriage, shall have acknowledged him as aforesaid.” *Id.*; *see also Gand*, 61 Wn.2d at 137 (no inheritance by illegitimate child from mother’s sister because the requirements of Rem. Rev. Stat. §1345 were not met).

Washington consistently applied this “acknowledgment rule” that an illegitimate child could only inherit from a man not married to his mother but whom he believed to be his father, if the man acknowledged paternity in writing before a witness. *See In re Rohrer*, 22 Wn. 151, 153, 60 P. 122 (1900) (illegitimate child appointed administratrix of estate because paternity acknowledged in writing); *Baker*, 49 Wn.2d at 610-11 (“Under the common law, and without such a statute, an illegitimate child has no right of inheritance from the estate of his father).

Collins, born in 1949 to Josephine Collins while she was married to Orville Collins, and making a claim on a trust that became irrevocable in 1946, would have been subject to this “acknowledgement rule.” Josephine and Orville both signed their names on his birth certificate, and Mondo, who died in 1996, never married Josephine. CP 64; *see* CP 289. Collins could have sought Mondo’s acknowledgment at any time during Mondo’s life, but he never did. There is no dispute that Mondo never acknowledged paternity of Collins in writing, let alone before a witness.

Because the 1946 law of succession governs the administration of Giuseppe's testamentary trust, Collins cannot and never did qualify as Mondo's son, and he cannot inherit from him or become a beneficiary of Mondo's father's Trust.

D. Under Any Law Governing Paternity, Collins' Claims Are Time-Barred.

The acknowledgment rule changed in 1975 when Washington adopted the Uniform Parentage Act and revised state laws for establishing paternity. *See* Laws 1975-76, 2d Ex. S., Ch. 42, Sec. 7, 24, 41.

Washington further changed paternity laws in 2002 and again in 2011. However, Collins has never filed an action to establish paternity under any of these statutes. The Petition he filed in this matter carefully avoids seeking such relief, CP 7-8, because Collins is barred by the statute of limitations from proceeding with such a claim. Despite this bar, Collins repeatedly identifies himself as Giuseppe's "grandson."¹¹ Collins failure to ever, let alone timely, file an action to establish paternity is another bar to his claim and provides an alternative basis upon which this Court should dismiss his claim.

¹¹ Collins interchangeably states, without support, that he is "Giuseppe Desimone's grandson", "indisputably Giuseppe's grandchild", that Mondo Desimone was his father, and refers to himself as Giuseppe's "grandchild". Appellant's Br. at 1, 4, 8, 9.

Under current law, claims to establish paternity in probate proceedings are governed by Washington's Uniform Parentage Act ("UPA"). See *Gonzales v. Cowan*, 76 Wn. App. 277, 281, 884 P.2d 19 (1994) ("the propriety of resolving paternity issues in accordance with the UPA, in the context of a probate proceeding, has been recognized"); *Matter of Estate of Sherry*, 40 Wn. App. 184, 193, 698 P.2d 94 (1985) ("The added precaution of following UPA procedures in a probate setting concurs with public policy and the strong presumption of legitimacy found in the UPA"); RCW 26.26.545 (adjudication of parentage can be joined with probate proceeding).¹²

The UPA now imposes a statute of limitations for proceedings to establish paternity. The statute of limitations adopted by Washington in 2002 provided that "a proceeding brought by . . . [an] individual to adjudicate the parentage of a child having a presumed father must be commenced no later than two years after the birth of the child." Laws 2002, Ch. 302, § 507 (amended 2011) (current version at 26.26.530).¹³ A

¹² The court in *Sherry* went on to conclude that because the probate court did not apply the UPA, it could not consider the paternity issue. See *Sherry*, 40 Wn. App. at 193 ("the probate court could have considered the paternity issues if the UPA procedures had been incorporated into the proceedings. Since they were not, the trial court erred in considering evidence of Earl, Jr.'s paternity in the probate proceeding.").

¹³ In 2011, Washington changed the statute of limitations for such proceedings to four years. Compare Laws 2002, Ch. 302, § 507 with current RCW 26.26.530(a). Nonetheless, the statute of limitations established in 2002 would govern any paternity suit brought by Collins. "It is well established that

paternity claim, therefore, accrues upon the birth of the child. The discovery rule does not apply. *In re Parentage of C.S.*, 134 Wn. App. 141, 148, 139 P.3d 366 (2006) (“there is no room” for the application of the discovery rule in paternity adjudication under the UPA). For individuals like Collins, born to presumed fathers before this statute of limitations was enacted, their claims accrued when Washington adopted the time limitation in 2002. *See In re Parentage of M.S.*, 128 Wn. App. 408, 415, 115 P.3d 405 (2005) (where child was born more than two years before limitation in RCW 26.26.530 enacted, claim accrued on date statute enacted in 2002).

Because Collins has a presumed father, this two-year time limitation applies to his assertion that Mondo Desimone is his biological

when the Legislature enacts a shortened statute of limitations, the time for bringing claims that accrued before the new law’s enactment begins to run on the new statute’s effective date.” *In re Parentage of M.S.*, 128 Wn. App. at 415. The statute that preceded the 2002 law “essentially contained a discovery rule,” and by contrast, the 2002 law required “filing [a paternity] action within two years of the child’s birth.” *In re Parentage of C.S.*, 134 Wn. App. at 148. Because the 2002 law shortened the statute of limitations for paternity actions, Washington paternity claims for children born before 2002 to presumed fathers accrued in 2002. As the court noted, “[a] comment to the Uniform Parentage Act states that after the two year period, ‘the presumption [of paternity] is immune from attack by any . . . individuals.’” *Id.* This further comports with the principle that statutes are not applied retroactively unless their “language requires a contrary construction.” *State v. Douty*, 92 Wn.2d 930, 935, 603 P.2d 373 (1979) (“It is a general rule, however, that a statute will be construed as prospective unless its language requires a contrary construction”). Nothing in the 2011 statute indicates that its expansion of the statute of limitations period revived all suits that had accrued and expired before 2011. Moreover, even if the four year statute of limitations did apply to children born before 2002, the accrual date of their paternity claims would still be 2002, requiring any paternity proceeding by Collins to have been commenced by 2006.

father. “[A] person is presumed to be the parent of a child if . . . [t]he person and the mother . . . of the child are married to each other . . . and the child is born during the marriage.” RCW 26.26.116(1)(a).

Alternatively, “[a] person is presumed to be the parent of a child if, for the first two years of the child’s life, the person resided in the same household with the child and openly held out the child as his or her own.” RCW 26.26.116(2). When Collins was born in 1949, his mother Josephine was married to Orville Collins. CP 31. Orville Collins signed his name on Dale Collins’ birth certificate, raised Collins, and held himself out as his father for decades. CP 31, 64. Orville Collins is Dale Collins’ presumed father.

Because Collins is an “individual” seeking “to adjudicate the parentage of a child having a presumed father,” he had to have started a proceeding to establish Mondo’s paternity within two years of its accrual. *See* Laws 2002, Ch. 302 §507; *see also In re M.K.M.R.*, 148 Wn. App. 383, 391, 199 P.3d 1038 (2009) (“Paternity actions are time limited” and “‘individual’ [under this section of the UPA] is not a term of art [but] . . . is given its plain ordinary meaning . . . [which includes] ‘a single or particular being,’”). The statute of limitations became effective June 13, 2002. RCW 26.26.904; *see also In re Parentage of M.S.*, 128 Wn. App. at

415. Thus, Collins had until June 13, 2004 to claim that Mondo Desimone was his biological father and failed to take any such action.¹⁴

E. The Trial Court Abused Its Discretion When It Denied the Danieli Beneficiaries' Request for Fees.

The Trustees were presented with Collins' claim and gave it careful and thorough attention before advising him that he was not a beneficiary under Giuseppe's Trust. CP 7. Collins initially presented allegations that he should be deemed a beneficiary of three different trusts. He appears to have accepted the rejection of any claim as to two of those trusts, but pursued the claim against the Giuseppe Trust. Because his claim focused on Mondo Desimone, and sought back payments since Mondo's death in 1996 as well as distributions into the future, the Danieli Beneficiaries were especially impacted by this litigation and separately represented. Because the Danieli Beneficiaries are "female issue", Collins claim could have a significant financial impact on this branch of the Desimone family.

On appeal, the Court can review, and reverse, the trial court's decision on fees, as well as make an award of fees for the appeal. The trial

¹⁴ Before June 2004, Collins had been told by Orville Collins that he might not be his biological father, knew that Orville Collins doubted whether he was the biological father of any of Josephine's three sons, had done DNA testing with his father than he claims established they were not related, and knew from his father that an aunt had at some point in the past "pointed out" a man in Seattle she believed to be Dale Collins' biological father. CP 31-32.

court's decision is reviewed for an abuse of discretion. *In re Estate of Black*, 116 Wn. App. 476, 489, 66 P.3d 670 (2003), *aff'd*, 153 Wn.2d 152, 173 (2004). The trial court's decision was entered without oral argument and without explanation. Based on the facts and equities here, that denial was an abuse of discretion.

The award of fees is an important aspect of the dispute resolution process now provided for under RCW 11.96A. Since the Trust and Estate Dispute Resolution Act of 1999 was enacted, it has included a fee provision that was "strengthened to ensure its broad application." D. Lawrence, *An Introduction to TEDRA*, Washington State Bar Association CLE (1999), Chapter 1, "History and Overview of the Trust and Estate Dispute Resolution Act of 1999." This is not a dispute amongst beneficiaries of a will or trust, where the impact of fees may come out of a common fund. Rather it is a dispute where the trust, and in particular the Danieli Beneficiaries, have been forced to incur legal fees to defend the trust, while the challenger shares in none of those costs. An award of fees would be consistent with a policy of protecting estates and trust through an award of fees. *Laue v. Elder*, 106 Wn. App. 699, 713, 25 P.3d 1032 (2001) (affirming award to estate under predecessor statute RCW 11.96.140); *In re Irrevocable Trust of McKean*, 144 Wn. App. 333, 345, 183 P.3d 317 (2008). In *In re Estate of Jones*, 152 Wn.2d 1, 20, 93 P.3d

147 (2004), the party whose conduct necessitated litigation was ordered to pay the other parties' attorney's fees. *See also, In re Korry Testamentary Marital Deduction Trust for Wife*, 56 Wn. App. 749, 756, 785 P.2d 484 (1990) (holding that unsuccessful litigation against an estate, prosecuted for personal benefit, is not a "substantial benefit" to the estate).

This Court should reverse the trial court's denial of fees, and exercise its discretion and award attorneys' fees to the Danieli Beneficiaries on appeal under RAP 18.1 and RCW 11.96A.150(1).

V. CONCLUSION

This 1943 Will that became irrevocable in 1946 limited Giuseppe's legacy, held in trust, to his children, and continues to limit that trust to the succeeding generations of Giuseppe's family born in wedlock. That should be the holding of this Court. An award of fees, under both RCW 11.96A.150(1) and RAP 18.1, should be granted, with the amount to be determined by further order of this Court.

RESPECTFULLY SUBMITTED this 19th day of August, 2013

PERKINS COIE LLP

By: Deborah J. Phillips

Deborah J. Phillips, WSBA No. 8540

DJPhillips@perkinscoie.com

Nicholas A. Manheim, WSBA No.

39858

NManheim@perkinscoie.com

1201 Third Avenue, Suite 4900

Seattle, WA 98101-3099

Telephone: 206.359.8000

Facsimile: 206.359.9000

Attorneys for Certain Danieli
Beneficiaries

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on August 19, 2013 I caused the foregoing document to be served on the following parties via U.S. mail unless otherwise described below:

Via Email:

Joseph R. Desimone
Richard L. Desimone, Jr.
c/o Karen R. Bertram
Kutscher Hereford Bertram Burkart
PLLC
705 Second Avenue, Suite. 800
Seattle, WA 98104-1711

Via Email

BNY Mellon, N.A.
c/o Johanna M. Coolbaugh
James K. Treadwell
Karr Tuttle Campbell
701 Fifth Avenue, Suite 3300
Seattle, WA 98104

*Co-Trustees of the Trust Under the
Last Will and Testament of Giuseppe
Desimone dated November 18, 1943*

Richard L. Desimone, Jr.
7902 Eastside Drive NE
Browns Point, WA 98422

Via Email

Dale Collins
c/o Hans P. Juhl
Jennifer L. King
Somers Tamblyn King, PLLC
2955 – 80th Avenue SE, Suite 201
Mercer Island, WA 98040

Via Email

Dale Collins
c/o Ann T. Wilson
The Law Offices of Ann T. Wilson
1420 Fifth Avenue, Suite 3000
Seattle, WA 98101

Via Email

Dale Colins
c/o Catherine W. Smith
Smith Goodfriend, P.S.
1619 - 8th Avenue N.
Seattle, WA 98109-3007

Shelley Caturegli
5522 Atascocita Timbers
North Tumble, TX 77346

Via Email
Catherine Ross
PO Box 681
Soap Lake, WA 98851-0681

Denise Peterman
22 E 13th Avenue
Kennewick, WA 99337

John Hittman
20134 SE 192nd Street
Renton, WA 98058

Laura Jensen
3704 SW 110th Street
Seattle, WA 98146

Richard L. Desimone III
78 Orchard Road North
Tacoma, WA 98406

John Anthony Desimone
c/o Jane M. Henderson
3306 SW 323rd Street
Federal Way, WA 98023

Ann Maria Roth
7319 Jones Avenue North
Seattle, WA 98117

Sarah C. Campbell
PO Box 6713
Ketchikan, AK 99901

Richard D. Collins
#1 Double Eagle Lane
Ketchikan, AK 99901

Executed in Seattle, Washington, this 19th day of August, 2013.



Christine F. Zea, Legal Secretary

APPENDICES

APPENDIX A

Changes in “Acknowledgment Rule” for “Illegitimate Children” Under Washington Law

1875: Washington adopted the statute that became Rem. Rev. Stat. § 1345, which provides: “[e]very illegitimate child shall be considered as an heir to the person who shall in writing signed in the presence of a competent witness, have acknowledged himself to the father of such child, and shall in all cases be considered as heir of his mother.” Law 1875, p. 55, § 4.

1965: Washington revised its law to provide that “[f]or the purpose of inheritance to, through and from an illegitimate child, such child shall be treated the same as if he were the legitimate child of his mother When the parents of an illegitimate child shall marry subsequent to his birth, or the father shall acknowledge said child in writing, such child shall be deemed to have been made the legitimate child of both of the parents for purposes of intestate succession.” Law 1965, Ch. 145, § 11.04.081.

1975: Washington revised its law to treat illegitimate and legitimate children the same. *See* Laws 1975-76, 2d Ex. S., Ch. 42, § 24 (amending the statute to read that “for the purpose of inheritance to, through, and from any child the effects and treatment of the parent-child relationship shall not depend upon whether or not he parents have been married”). This is the current state of the law. *See* RCW 11.04.081.



Inside the Legislature

- ★ Find Your Legislator
- ★ Visiting the Legislature
- ★ Agendas, Schedules and Calendars
- ★ Bill Information
- ★ Laws and Agency Rules
- ★ Legislative Committees
- ★ Legislative Agencies
- ★ Legislative Information Center
- ★ E-mail Notifications
- ★ Civic Education
- ★ History of the State Legislature

Outside the Legislature

- ★ Congress - the Other Washington
- ★ TVW
- ★ Washington Courts
- ★ OFM Fiscal Note Website



[RCWs](#) > [Dispositions](#) > [Title 11](#) > [Chapter 11.04](#)

Chapter 11.04.080 RCW Dispositions DESCENT AND DISTRIBUTION

Sections

11.04.010 "Issue" and "real estate" defined.

[Code 1881 § 3314; 1875 p 57 § 13; 1863 p 264 § 350; 1860 p 223 § 316; 1854 p 308 § 243, part; RRS § 1354.]

Repealed by 1965 c 145 § [11.99.015](#). See RCW [11.02.005\(4\)](#) and (5).

11.04.020 Descent of separate real property.

[1927 c 160 § 1; Code 1881 § 3302; 1875 p 53 § 1; 1863 p 261 § 340; 1860 p 221 § 306; 1854 p 305 § 231; RRS § 1341.]

Repealed by 1965 c 145 § [11.99.015](#). See RCW [11.04.015](#).

11.04.030 Distribution of separate personal estate.

[Code 1881 § 3316; 1875 p 57 § 15; 1863 p 264 § 353; 1860 p 224 § 319; 1854 p 308 § 244; RRS § 1364.]

Repealed by 1965 c 145 § [11.99.015](#). See RCW [11.04.015](#).

11.04.040 Effect of advancement where widow and issue survive.

[Code 1881 § 3317; 1875 p 58 § 16; 1863 p 265 § 354; 1860 p 224 § 320; 1854 p 309 § 245; RRS § 1365.]

Repealed by 1965 c 145 § [11.99.015](#). See RCW [11.04.041](#).

11.04.050 Descent and distribution of community property.

[Code 1881 §§ 3303, 2411, 2412; 1879 p 78 §§ 12, 13; RRS § 1342. Cf. 1875 p 55 § 2.]

Repealed by 1965 c 145 § [11.99.015](#). See RCW [11.04.015](#).

11.04.070 Survivorship between joint tenants abolished — Exceptions.

[1953 c 270 § 1; 1885 p 165 § 1; RRS § 1344.]

Repealed by 1961 c 2 § 4.

11.04.080 Inheritance by illegitimate child.

[Code 1881 § 3305; 1875 p 55 § 4; 1863 p 262 § 341; 1860 p 222 § 307; 1854 p 306 § 232; RRS § 1345.]

Repealed by 1965 c 145 § [11.99.015](#). See RCW [11.04.081](#).

11.04.090 Inheritance from illegitimate child.

[Code 1881 § 3306; 1875 p 56 § 5; 1863 p 262 § 342; 1860 p 222 § 308; 1854 p 307 § 233; RRS § 1346.]

Repealed by 1965 c 145 § [11.99.015](#). See RCW [11.04.081](#).

11.04.100 Degree of kindred — How computed.

[1945 c 72 § 1; Code 1881 § 3307; 1875 p 56 § 6; 1863 p 263 § 343; 1860 p 222 § 309; 1854 p 307 § 235; Rem. Supp. 1945 § 1347.]

Repealed by 1965 c 145 § [11.99.015](#). See RCW [11.02.005\(5\)](#) and [11.04.035](#).

- 11.04.110 Right of representation — Posthumous children.**
[Code 1881 § 3315; 1875 p 57 § 14; 1863 p 264 § 351; 1860 p 223 § 317; 1854 p 308 § 243, part; RRS § 1355.]
Repealed by 1965 c 145 § [11.99.015](#). See RCW [11.02.005\(3\)](#).
- 11.04.120 Advancement, how considered.**
[Code 1881 § 3308; 1875 p 56 § 7; 1863 p 263 § 344; 1860 p 222 § 310; 1854 p 307 § 236; RRS § 1348.]
Repealed by 1965 c 145 § [11.99.015](#). See RCW [11.04.041](#).
- 11.04.130 Effect on distributive shares.**
[Code 1881 § 3309; 1875 p 56 § 8; 1863 p 263 § 345; 1860 p 222 § 311; 1854 p 307 § 237; RRS § 1349.]
Repealed by 1965 c 145 § [11.99.015](#). See RCW [11.04.041](#).
- 11.04.140 Procedure in determining shares.**
[Code 1881 § 3310; 1875 p 56 § 9; 1863 p 263 § 346; 1860 p 223 § 312; 1854 p 307 § 238; RRS § 1350.]
Repealed by 1965 c 145 § [11.99.015](#). See RCW [11.04.041](#).
- 11.04.150 What is advancement.**
[Code 1881 § 3311; 1875 p 56 § 10; 1863 p 263 § 347; 1860 p 223 § 313; 1854 p 307 § 239; RRS § 1351.]
Repealed by 1965 c 145 § [11.99.015](#). See RCW [11.04.041](#).
- 11.04.160 Value of advancement, how determined.**
[Code 1881 § 3312; 1875 p 57 § 11; 1863 p 263 § 348; 1860 p 223 § 314; 1854 p 307 § 240; RRS § 1352.]
Repealed by 1965 c 145 § [11.99.015](#). See RCW [11.04.041](#).
- 11.04.170 Death of descendant advanced, effect.**
[Code 1881 § 3313; 1875 p 57 § 12; 1863 p 263 § 349; 1860 p 223 § 315; 1854 p 307 § 241; RRS § 1353.]
Repealed by 1965 c 145 § [11.99.015](#). See RCW [11.04.041](#).
- 11.04.180 Devolution of property in case of simultaneous death of owners.**
[1943 c 113 § 1; Rem. Supp. 1943 § 1370-1.]
Repealed by 1965 c 145 § [11.99.015](#). Later enactment, see RCW [11.05.010](#).
- 11.04.190 Procedure when beneficiaries die simultaneously.**
[1943 c 113 § 2; Rem. Supp. 1943 § 1370-2.]
Repealed by 1965 c 145 § [11.99.015](#). Later enactment, see RCW [11.05.020](#).
- 11.04.200 Joint tenants — Simultaneous death.**
[1943 c 113 § 3; Rem. Supp. 1943 § 1370-3.]
Repealed by 1965 c 145 § [11.99.015](#). Later enactment, see RCW [11.05.030](#).
- 11.04.210 Distribution of insurance policy when insured and beneficiary die simultaneously.**
[1943 c 113 § 4; Rem. Supp. 1943 § 1370-4.]
Repealed by 1965 c 145 § [11.99.015](#). Later enactment, see RCW [11.05.040](#).
- 11.04.220 Scope of act limited.**
[1943 c 113 § 6; Rem. Supp. 1943 § 1370-6.]
Repealed by 1965 c 145 § [11.99.015](#). Later enactment, see RCW [11.05.050](#).

11.04.260 Title of heirs confirmed.

[1895 c 105 § 2; RRS § 1367.]

Repealed by 1965 c 145 § 11.99.015.

11.04.270 Limitation of liability for debts.

[1965 c 145 § 11.04.270. Prior: 1929 c 218 § 1; 1895 c 105 § 3; RRS § 1368.]

Repealed by 2005 c 97 § 16.

11.04.280 Meaning of "heirs."

[1895 c 105 § 4; RRS § 1369.]

Repealed by 1965 c 145 § 11.99.015. See RCW 11.02.005(6).

L A W S
OF THE
TERRITORY OF WASHINGTON,
ENACTED BY THE
LEGISLATIVE ASSEMBLY
IN THE YEAR A. D. 1873,
TOGETHER WITH
JOINT RESOLUTIONS AND MEMORIALS.

Published by Authority.

OLYMPIA:
C. B. BAGLEY, PUBLIC PRINTER.
1873.

AN ACT

IN RELATION TO THE DUTIES OF PROBATE JUDGES.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That it shall be the duty of the probate judges of the various counties of Washington Territory, to file and record in the records of the probate courts, all original petitions for the sale of real estate, or personal property, in the administration of any estate, and to enter at length all orders or decrees made upon such petitions, or regarding the distribution of any estate, admitted to probate, and all other original petitions concerning any estate during the course of its administration.

SEC. 2. All acts or parts of acts conflicting with this act be and the same are hereby repealed.

APPROVED NOV. 12, 1875.

AN ACT

TO REGULATE THE DESCENT OF REAL ESTATE AND THE DISTRIBUTION OF PERSONAL PROPERTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* When any person shall die seized of any lands, tenements or hereditaments, or any right thereto, or entitled to any interest therein, in fee simple, or for the life of another, not having devised the same, they shall descend subject to the debts as follows:

1st. If the decedent leaves a surviving husband or wife and only one child, or the lawful issue of one child, in equal shares to the surviving husband, or wife and child, or issue of such child. If the decedent leaves a surviving husband or wife, and more than one child living or one child living, and the lawful issue of one or more deceased children, one-third to the surviving husband or wife, and the remainder in equal shares to his children and to the lawful issue of any deceased child by right of representation. If there be no child of the decedent living at his death, the remainder goes to all of his lineal descendants; and if all the descendants are in the same degree of kindred to the decedent, they share equally, otherwise they take according to the right of representation.

2nd. If the decedent leaves no issue, the estate goes in equal shares to the surviving husband or wife, and to the decedent's father and mother, if both survive. If there be no father nor mother, then one-half goes in equal shares to the brothers and sisters of the decedent and to the children of any deceased brothers or sisters, by right of representation. If decedent leaves no issue, nor husband, nor wife, the estate must go to his father and mother.

3d. If there be no issue, nor husband, nor wife, nor father and mother, nor either, then in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister, by right of representation.

4th. If the decedent leaves a surviving husband or wife and no issue, and no father nor mother, nor brother, nor sister, the whole estate goes to the surviving husband or wife.

5th. If the decedent leaves no issue, nor husband, nor wife, and no father nor mother, nor brother, nor sister, the estate must go to the next of kin, in equal degree, excepting that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claimed through the nearest ancestor must be preferred to those claiming through an ancestor more remote, however.

6th. If the decedent leaves several children or one child and the issue of one or more other children, and any such surviving child

dies under age, and not having been married, all the estate that comes to the deceased child by inheritance from such decedent, descends in equal shares to the other children of the same parent, and to the issue of any such other children who are dead, by right of representation.

7th. If at the death of such child, who dies under age, not having been married, all the other children of his parents are also dead, and any of them have left issue, the estate that came to such child by inheritance from his parent, descends to the issue of all other children of the same parent; and if all the issue are in the same degree of kindred to the child, they share the estate equally, otherwise they take according to the right of representation.

8th. If the decedent leaves no husband, wife or kindred, the estate escheats to the Territory, for the support of common schools, in the county in which the decedent resided during lifetime, or where the estate may be situated.

SEC. 2. Upon the death of husband or wife, the whole of the community property, subject to the community debts, shall go to the survivor, but nothing herein contained shall be construed to conflict with laws exempting property from attachment and execution, and specially the provision securing the homestead to the survivor, and all property except as an allowance for support of the family.

SEC. 3. The provisions of section one, as to the inheritance of the husband and wife from each other, apply only to the separate property of the decedants; and taken the place of tenancy in dower and tenancy by the curtesy, which are hereby abolished.

SEC. 4. Every illegitimate child shall be considered as an heir to the person who shall in writing, signed in the presence of a competent witness, have acknowledged himself to be the father of such child, and shall in all cases be considered as heir of his mother, and shall inherit his or her estate in whole or in part, as the case may be, in the same manner as if he had been born in lawful wedlock; but he shall not be allowed to

claim as representing his father or mother, any part of the estate of his or her kindred, either lineal or collateral, unless before his death his parents shall have intermarried, and his father, after such marriage, shall have acknowledged him as aforesaid, and adopted him into his family, in which case such child and all the legitimate children shall be considered as brothers and sisters, and on the death of either of them intestate, and without issue, the others shall inherit his estate and he theirs, as heretofore provided in like manner, as if all the children had been legitimate, saving to the father and mother respectively their rights in the estates of all the said children, as provided heretofore in like manner as if all had been legitimate.

SEC. 5. If any illegitimate child shall die intestate without lawful issue, his estate shall descend to his mother, or in case of her decease, to her heirs at law.

SEC. 6. The degree of kindred shall be computed according to the rules of the civil law, and the kindred of the half blood shall inherit equally with those of the whole blood in the same degree.

SEC. 7. Any estate, real or personal that may have been given by the intestate in his lifetime as an advancement to any child or other lineal descent, shall be considered a part of the intestate's estate so far as regards the division and distribution thereof among his issue, and shall be taken by such child or other descendant, toward his share of the intestate's estate.

SEC. 8. If the amount of such advancement there exceed the share of the heir so advanced, he shall be excluded from any further portion in the division and distribution of the estate, but he shall not be required to refund any part of such advancement, and if the amount so received shall be less than his share, he shall be entitled to so much more as will give him his full share of the estate of the deceased.

SEC. 9. If any such advancement shall have been made in real estate, the value thereof shall, for the purposes of the preceding section, be considered as part of the real estate to be divided, and if it be in personal estate, and if in either case it shall

exceed the share of real or personal estate respectively, that would have come to the heir so advanced, he shall not refund any part of it, but shall receive so much less out of the other part of the estate as will make the whole share equal to those of the other heirs who are in the same degree with him.

SEC. 10. All gifts and grants shall be deemed to have been made in advancement, if expressed in the gift or grant to be so made, or if charged in writing by the intestate as an advancement, or acknowledged in writing as such by the child or other descendant.

SEC. 11. If the value of the estate so advanced shall be expressed in the conveyance, or in the charge thereof made by the intestate, or in the acknowledgment by the party receiving it, it shall be considered of that value in the division and distribution of the estate, otherwise it shall be estimated at its value when given.

SEC. 12. If any child or lineal descendant so advanced shall die before the intestate, leaving issue, the advancement shall be taken into consideration in the division and distribution of estate, and the amount thereof shall be allowed accordingly by the representatives of the heir so advanced, as so much received towards their share of the estate in like manner as if the advancement had been made directly to them.

SEC. 13. The word "issue," as used in this act, includes all the lawful lineal descendants of the ancestor, and the words "real estate," include all lands, tenements, and hereditaments, and all rights thereto, and all interests therein possessed and claimed in fee simple, or for the life of a third person.

SEC. 14. Inheritance or succession by right of representation takes place when the descendants of any deceased heir take the same share or right in the estate of another that their parent would have taken if living. Posthumous children are considered as living at the death of their parent.

DISTRIBUTION OF PERSONAL ESTATE.

SEC. 15. When any person shall die possessed of any sep-

1965
SESSION LAWS
OF THE
STATE OF WASHINGTON

REGULAR SESSION, THIRTY-NINTH LEGISLATURE
Convened January 11, 1965. Adjourned March 11, 1965.

VOLUME NO. 1
ALL LAWS OF THE 1965 REGULAR SESSION



Compiled in Chapters by
A. LUDLOW KRAMER
Secretary of State

MARGINAL NOTES AND INDEX

By
RICHARD O. WHITE
Code Reviser

Published by Authority

CHAPTER 145.

[Senate Bill No. 6.]

PROBATE CODE.

AN ACT establishing a code of probate law and procedure, including the making and probating of wills, administration of estates of deceased persons and appointment of guardians of the persons and estates of minors, insane and mentally incompetent persons and administration of their estates; enacting a title of the Revised Code of Washington to be known as Title 11—Probate Law and Procedure; providing penalties; repealing certain acts and parts of acts; and declaring an effective date.

Be it enacted by the Legislature of the State of Washington:

Title 11

Probate Law and Procedure

Chapter 11.02

GENERAL PROVISIONS

SECTION 11.02.005 *Definitions and Use of Terms.*
When used in this title, unless otherwise required from the context:

Probate law
and procedure.
Definitions and
use of terms.

(1) "Personal representative" includes executor, administrator, special administrator, and guardian.

(2) "Net estate" refers to the real and personal property of a decedent exclusive of homestead rights, exempt property, the family allowance and enforceable claims against, and debts of, the estate.

(3) "Representation" refers to a method of determining distribution in which the takers are in unequal degrees of kinship with respect to the intestate, and is accomplished as follows: After first determining who, of those entitled to share in the estate, are in the nearest degree of kinship, the estate is divided into equal shares, the number of shares being the sum

charged with such proportion of the advancement as the amount he would have inherited, had there been no advancement, bears to the amount which the advancee would have inherited, had there been no advancement.

SEC. 11.04.060 *Tenancy in Dower and By Curtesy Abolished.* The provisions of RCW 11.04.015, as to the inheritance of the husband and wife from each other take the place of tenancy in dower and tenancy by curtesy, which are hereby abolished.

Tenancy in dower and by curtesy abolished.

SEC. 11.04.071 *Survivorship as Incident of Tenancy by the Entireties Abolished.* The right of survivorship as an incident of tenancy by the entireties is abolished.

Survivorship as incident, etc., abolished.

SEC. 11.04.081 *Inheritance By and From Illegitimate Child.* For the purpose of inheritance to, through and from an illegitimate child, such child shall be treated the same as if he were the legitimate child of his mother, so that he and his issue shall inherit from his mother and from his maternal kindred, in all degrees, and they may inherit from him. Such child shall also be treated the same as if he were a legitimate child of his mother for the purpose of determining homestead rights, the distribution of exempt property and the making of family allowances. When the parents of an illegitimate child shall marry subsequent to his birth, or the father shall acknowledge said child in writing, such child shall be deemed to have been made the legitimate child of both of the parents for purposes of intestate succession.

Inheritance by and from illegitimate child.

SEC. 11.04.085 *Inheritance by Adopted Child.* A lawfully adopted child shall not be considered an "heir" of his natural parents for purposes of this title.

Inheritance by adopted child.

SEC. 11.04.095 *Inheritance From Stepparent Avoids Escheat.* If a person die leaving a surviving

Inheritance from stepparent avoids escheat.

1975-76
SESSION LAWS
OF THE
STATE OF WASHINGTON

2nd EXTRAORDINARY SESSION
FORTY-FOURTH LEGISLATURE

Convened July 18, 1975. Recessed July 21, 1975.
Reconvened Aug. 9, 1975. Recessed Aug. 9, 1975.
Reconvened Sept. 5, 1975. Recessed Sept. 6, 1975.
Reconvened Jan. 12, 1976. Adjourned sine die March 26, 1976.



Published at Olympia by the Statute Law Committee pursuant
to Chapter 6, Laws of 1969.

RICHARD O. WHITE
Code Reviser

NEW SECTION. Sec. 11. There is added to chapter 134, Laws of 1969 ex. sess. and to chapter 70.95 RCW a new section to read as follows:

If any provision of this 1976 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected.

Passed the Senate February 18, 1976.

Passed the House February 12, 1976.

Approved by the Governor February 21, 1976.

Filed in Office of Secretary of State February 21, 1976.

CHAPTER 42

[Engrossed Substitute Senate Bill No. 2243]

UNIFORM PARENTAGE ACT

AN ACT Relating to parentage; amending section 2, chapter 131, Laws of 1959 and RCW 4.28.185; amending section 11.02.005, chapter 145, Laws of 1965 and RCW 11.02.005; amending section 11.04.081, chapter 145, Laws of 1965 and RCW 11.04.081; amending section 6, page 405, Laws of 1854 as last amended by section 2388, Code of 1881 and RCW 26.04.060; amending section 3, chapter 291, Laws of 1955 as amended by section 2, chapter 134, Laws of 1973 and RCW 26.32-.030; amending section 4, chapter 291, Laws of 1955 as amended by section 3, chapter 134, Laws of 1973 and RCW 26.32.040; amending section 5, chapter 291, Laws of 1955 as amended by section 4, chapter 134, Laws of 1973 and RCW 26.32.050; amending section 7, chapter 291, Laws of 1955 and RCW 26.32.070; amending section 8, chapter 291, Laws of 1955 as amended by section 5, chapter 134, Laws of 1973 and RCW 26.32.080; amending section 6, chapter 134, Laws of 1973 and RCW 26.32.085; amending section 10, chapter 134, Laws of 1973 and RCW 26.32.300; amending section 11, chapter 134, Laws of 1973 and RCW 26.32.310; amending section 1, chapter 49, Laws of 1903 as amended by section 7, chapter 134, Laws of 1973 and RCW 26.37.010; amending section 8, chapter 134, Laws of 1973 and RCW 26.37.015; amending section 43.20.090, chapter 8, Laws of 1965 as last amended by section 1, chapter 25, Laws of 1970 ex. sess. and RCW 43.20.090; amending section 51.08.030, chapter 23, Laws of 1961 as last amended by section 1, chapter 65, Laws of 1972 ex. sess. and RCW 51.08.030; amending section 21, chapter 5, Laws of 1961 ex. sess. and RCW 70.58.095; amending section 6, chapter 159, Laws of 1945 as last amended by section 2, chapter 279, Laws of 1969 ex. sess. and RCW 70.58.200; amending section 1, chapter 133, Laws of 1939 as amended by section 1, chapter 12, Laws of 1943 and RCW 70.58-.210; adding a new chapter to Title 26 RCW; repealing sections 1 through 8, chapter 203, Laws of 1919 and RCW 26.24.010 through 26.24.080; repealing section 9, chapter 203, Laws of 1919, section 1, chapter 29, Laws of 1973 and RCW 26.24.090; repealing sections 10 through 18, chapter 203, Laws of 1919 and RCW 26.24.100 through 26.24.180; repealing section 19, chapter 203, Laws of 1919, section 1, chapter 134, Laws of 1973 and RCW 26.24.190; and repealing section 9, chapter 134, Laws of 1973 and RCW 26.28.110.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Section 1. There is added to Title 26 RCW a new chapter to read as set forth in sections 2 through 21 and in sections 42 through 45 of this 1976 amendatory act.

NEW SECTION. Sec. 2. As used in this chapter, "parent and child relationship" means the legal relationship existing between a child and his natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship.

NEW SECTION. Sec. 3. The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.

(9) "Codicil" shall mean an instrument executed in the manner provided by this title for wills, which refers to an existing will for the purpose of altering or changing the same, and which need not be attached thereto.

(10) "Guardian" means a personal representative of the estate of an incompetent person as defined in RCW 11.88.010 and the term may be used in lieu of "personal representative" wherever required by context.

(11) "Administrator" means a personal representative of the estate of a decedent and the term may be used in lieu of "personal representative" wherever required by context.

(12) "Executor" means a personal representative of the estate of a decedent appointed by will and the term may be used in lieu of "personal representative" wherever required by context.

(13) "Special administrator" means a personal representative of the estate of a decedent appointed for limited purposes and the term may be used in lieu of "personal representative" wherever required by context.

(14) Words that import the singular number only, may also be applied to the plural of persons and things.

(15) Words importing the masculine gender only may be extended to females also.

Sec. 24. Section 11.04.081, chapter 145, Laws of 1965 and RCW 11.04.081 are each amended to read as follows:

For the purpose of inheritance to, through, and from ~~((an illegitimate))~~ any child, ~~((such child shall be treated the same as if he were the legitimate child of his mother, so that he and his issue shall inherit from his mother and from his maternal kindred, in all degrees, and they may inherit from him. Such child shall also be treated the same as if he were a legitimate child of his mother for the purpose of determining homestead rights, the distribution of exempt property and the making of family allowances. When the parents of an illegitimate child shall marry subsequent to his birth, or the father shall acknowledge said child in writing, such child shall be deemed to have been made the legitimate child of both of the parents for purposes of intestate succession))~~ the effects and treatment of the parent-child relationship shall not depend upon whether or not the parents have been married.

Sec. 25. Section 6, page 405, Laws of 1854 as last amended by section 2388, Code of 1881 and RCW 26.04.060 are each amended to read as follows:

A marriage solemnized before any person professing to be a minister or a priest of any religious denomination in this state or professing to be an authorized officer thereof, is not void, nor shall the validity thereof be in any way affected on account of any want of power or authority in such person, if such marriage be consummated with a belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage. ~~((Illegitimate children become legitimate by the subsequent marriage of their parents with each other.))~~

Sec. 26. Section 3, chapter 291, Laws of 1955 as amended by section 2, chapter 134, Laws of 1973 and RCW 26.32.030 are each amended to read as follows:

Written consent to such adoption must be filed prior to a hearing on the petition, as follows:

RCW 11.04.081

Inheritance by and from any child not dependent upon marriage of parents.

For the purpose of inheritance to, through, and from any child, the effects and treatment of the parent-child relationship shall not depend upon whether or not the parents have been married.

[1975-76 2nd ex.s. c 42 § 24; 1965 c 145 § 11.04.081. Formerly RCW 11.04.080 and 11.04.090.]

Notes:

Effect of decree of adoption: RCW 26.33.260.

"Issue" includes all lawfully adopted children: RCW 11.02.005(8).

APPENDIX B

Proving Paternity Under Washington Law

1919: Washington adopted a law that was recorded as Remington's Revised Statute § 1970 et al. governing "bastardy proceedings"—in other words, proceedings to prove that someone was the father of an illegitimate child. *See* Laws 1919, Ch. 203, § 1 ("[w]hen an unmarried woman shall be pregnant or delivered of a child which shall not be the issue of lawful wedlock, complaint may be made in writing by said unmarried woman, her father, mother or guardian, to any justice of the peace in the county of which she has been a resident for thirty days last past and where she may be so pregnant or delivered, or where the person accused may be found, accusing, under oath, a person with being the father of such child, and it shall be the duty of such justice forthwith to issue a warrant against the person so accused and cause him to be brought forthwith before such justice"). The law provided that "[n]o prosecution under this act shall be brought after two years from the birth of the child: Provided, the time during which any person accused shall be absent from the state shall not be computed." *Id.* at § 16.

1975-76: Washington adopted the Uniform Parentage Act ("UPA") and repealed the 1919 filiation statute. *See* Laws 1975-76, 2d Ex. S. Ch. 42, § 7, 41. The UPA established that "[a]ny interested party or the department of social and health services or the state of Washington may bring an action at any time for the purpose of determining the existence or nonexistence of the father and child relationship."

1983: Washington revised the UPA in relevant part to state "[a] child, a child's natural mother, a man alleged or alleging himself to be the father, a child's guardian, a child's personal representative, the state of Washington, or any interested party may bring an action at any time for the purpose of declaring the existence or nonexistence of the father and child relationship." Laws 1983, Ch. 41, § 5.

2002: Washington revised the UPA again to include a statute of limitations for a child seeking to establish paternity. *See* Laws 2002, Ch. 302, §§ 506, 507. Under § 506, "[a] proceeding to adjudicate the parentage of a child having no presumed, acknowledged, or adjudicated father may be commenced at any time during the life of the child, even after: (1) The child becomes an adult; or (2) An earlier proceeding to adjudicate paternity has been dismissed based on the application of a



Inside the Legislature

- ★ Find Your Legislator
- ★ Visiting the Legislature
- ★ Agendas, Schedules and Calendars
- ★ Bill Information
- ★ Laws and Agency Rules
- ★ Legislative Committees
- ★ Legislative Agencies
- ★ Legislative Information Center
- ★ E-mail Notifications
- ★ Civic Education
- ★ History of the State Legislature

Outside the Legislature

- ★ Congress - the Other Washington
- ★ TVW
- ★ Washington Courts
- ★ OFM Fiscal Note Website



[RCWs](#) > [Dispositions](#) > [Title 26](#) > [Chapter 26.24](#)

Chapter 26.24 RCW Dispositions FILIATION PROCEEDINGS

Sections

- 26.24.010 Complaint.**
[1919 c 203 § 1; RRS § 1970.]
Repealed by 1975-'76 2nd ex.s. c 42 § 41.
- 26.24.020 Hearing.**
[1919 c 203 § 2; RRS § 1971.]
Repealed by 1975-'76 2nd ex.s. c 42 § 41.
- 26.24.030 Duty of prosecuting attorney.**
[1919 c 203 § 3; RRS § 1972.]
Repealed by 1975-'76 2nd ex.s. c 42 § 41.
- 26.24.040 Bond after commitment.**
[1919 c 203 § 4; RRS § 1973.]
Repealed by 1975-'76 2nd ex.s. c 42 § 41.
- 26.24.050 Testimony reduced to writing.**
[1919 c 203 § 5; RRS § 1974.]
Repealed by 1975-'76 2nd ex.s. c 42 § 41.
- 26.24.060 Docketing in superior court.**
[1919 c 203 § 6; RRS § 1975.]
Repealed by 1975-'76 2nd ex.s. c 42 § 41.
- 26.24.070 Trial.**
[1919 c 203 § 7; RRS § 1976.]
Repealed by 1975-'76 2nd ex.s. c 42 § 41.
- 26.24.080 Discharge — No costs against complainant.**
[1919 c 203 § 8; RRS § 1977.]
Repealed by 1975-'76 2nd ex.s. c 42 § 41.
- 26.24.090 Judgment ordering support — Bond.**
[1973 c 29 § 1; 1919 c 203 § 9; RRS § 1978.]
Repealed by 1975-'76 2nd ex.s. c 42 § 41.
- 26.24.100 Criminal proceedings may be brought.**
[1919 c 203 § 10; RRS § 1979.]
Repealed by 1975-'76 2nd ex.s. c 42 § 41.
- 26.24.110 Execution in absence of bond.**
[1919 c 203 § 11; RRS § 1979-1.]
Repealed by 1975-'76 2nd ex.s. c 42 § 41.

26.24.120 Commitment for contempt for failure to give bond — Relief from order.

[1919 c 203 § 12; RRS § 1979-2.]

Repealed by 1975-'76 2nd ex.s. c 42 § 41.

26.24.130 Disposition of judgment money.

[1919 c 203 § 13; RRS § 1979-3.]

Repealed by 1975-'76 2nd ex.s. c 42 § 41.

26.24.140 Default in payment — Procedure.

[1919 c 203 § 14; RRS § 1979-4.]

Repealed by 1975-'76 2nd ex.s. c 42 § 41.

26.24.150 Commitment for contempt for nonpayment.

[1919 c 203 § 15; RRS § 1979-5.]

Repealed by 1975-'76 2nd ex.s. c 42 § 41.

26.24.160 Limitation on prosecution.

[1919 c 203 § 16; RRS § 1979-6.]

Repealed by 1975-'76 2nd ex.s. c 42 § 41.

26.24.170 Mother's death does not abate action.

[1919 c 203 § 17; RRS § 1979-7.]

Repealed by 1975-'76 2nd ex.s. c 42 § 41.

26.24.180 Effect of child's death.

[1919 c 203 § 18; RRS § 1979-8.]

Repealed by 1975-'76 2nd ex.s. c 42 § 41.

26.24.190 Custody of child.

[1973 c 134 § 1; 1919 c 203 § 19; RRS § 1979-9.]

Repealed by 1975-'76 2nd ex.s. c 42 § 41.

26.24.200 Legitimation of illegitimate children.

[Code 1881 § 2388, part; 1866 p 83 § 10, part; 1854 p 405 § 6, part; RRS § 8442, part.]

Now codified in RCW 26.04.060.

SESSION LAWS
OF THE
STATE OF WASHINGTON
SIXTEENTH SESSION

Convened January 13; Adjourned March 13

1919

Compiled in Chapters by I. M. HOWELL, Secretary of State

Marginal Notes

BY

L. L. THOMPSON

Attorney General

PUBLISHED BY AUTHORITY

the Juvenile Court shall be subject to the other provisions of this act and may at any time, by order of the School Directors be returned to the Juvenile Court and shall not thereafter be returned to the Parental school without the consent of the Directors of such School District.

SEC. 2. [Vetoed.]

Passed the House, March 9, 1919.

Passed the Senate, March 12, 1919.

Section 1 approved by the Governor March 22, 1919.

Section 2 vetoed by the Governor March 22, 1919.

CHAPTER 203.

[S. H. B. 19.]

PROVISIONS FOR MAINTENANCE OF CHILD BORN OUT OF WEDLOCK.

AN ACT relating to filiation proceedings, providing for the institution, trial, procedure, and judgment and enforcement thereof, in actions to determine the paternity of a child of an unmarried mother and providing for the maintenance of such child and certain expenses of the mother thereof, and providing for the prosecution and punishment of such person.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. When an unmarried woman shall be pregnant or delivered of a child which shall not be the issue of lawful wedlock, complaint may be made in writing by said unmarried woman, her father, mother or guardian, to any justice of the peace in the county of which she has been a resident for thirty days last past and where she may be so pregnant or delivered, or where the person accused may be found, accusing, under oath, a person with being the father of such child, and it shall be the duty of such justice forthwith to issue a warrant against the person so

Complaint
against
putative
father.

accused and cause him to be brought forthwith before such justice.

Hearing
before
justice of
peace.

SEC. 2. Upon the appearance of the accused, it shall be the duty of such justice to examine the woman, if then present, under oath, in the presence of the man alleged to be the father of the child, touching the charge against him, or, if the woman be not then present, to fix a date for such examination not more than ten days thereafter and to require the accused to give a bond with sufficient surety conditioned that he will appear to answer such charge upon such date, or upon any other date to which such examination may be continued; and in default of the giving of such bond such justice shall cause the accused to be committed to the county jail. The accused shall have the right to controvert such charge and evidence may be heard as in the case of trial of civil actions before such justice. If such justice shall be of the opinion that sufficient cause appears, it shall be his duty to bind the person so accused in bond with sufficient surety payable to the state of Washington and conditioned that he will appear in the superior court of such county, at such time or times as the judge thereof may fix or order, to answer such complaint, and abide the judgment and orders of the court; or failing therein, that he will pay such sums of money and to such person as may be adjudged by such court; and the justice shall transmit such bond, together with the transcript of his proceedings, the complaint and the other papers in the case, without delay to the clerk of the superior court of such county. And if the accused shall fail to give a bond as required, such justice shall commit him to jail until discharged by law. Such bond, or any bond given by said accused on any continuance or arrest, may be put in suit by any person in whose favor the court may adjudge any sum of money in such proceeding.

Accused
bound over
to superior
court.

Action
on bond.

SEC. 3. Such proceeding shall be entitled in the name of the state of Washington, and shall be prosecuted in both justice court and the superior court by the prosecuting attorney of the county where brought, and shall not be dismissed except by such prosecuting attorney upon a showing to the court that the provisions herein contemplated to be made for the maintenance, care, education and support of the child have been made.

Duty of prosecuting attorney.

SEC. 4. Any person committed to jail for failure to give such bond may be discharged from custody by filing at any time after his commitment, with the clerk of the superior court such bond, to the satisfaction of the said clerk; and a certificate of the clerk to the sheriff shall be sufficient to authorize him to discharge the accused from custody.

Discharge on recognizance bond.

SEC. 5. The testimony of the mother, or mother to be, shall be by such justice reduced to writing, read carefully to such witness and be by her signed, and shall, by such justice, be returned to the superior court with the other papers in the proceeding, to be used by either party thereto.

Mother's testimony reduced to writing.

SEC. 6. Upon the filing of the transcript, complaint and other papers in the superior court, the clerk thereof shall docket the same, and said complaint shall stand as the complaint therein, and issue shall be joined thereon as now provided in civil actions.

Docketing in superior court.

SEC. 7. If the accused in the superior court denies the charge, the issue may be tried by the court or by jury if demanded by either party.

Trial.

SEC. 8. If on the trial of the issue joined, the finding or verdict shall be that the child is not the child of the accused, then the judgment of the court shall be that he be discharged: *Provided, however,* that no court costs shall be required of the com-

Judgment of discharge.

plainant for the proceeding before such justice or the superior court.

Judgment ordering support of child.

SEC. 9. In the event the issue be found against the accused, or whenever he shall, in open court, have confessed the truth of the accusation against him, he shall be charged by the order and judgment of the court to pay a sum to be therein specified, during each year of the life of such child, until such child shall have reached the age of sixteen years, for the care, education and support of such child, and shall also be charged thereby to pay the expenses of the mother incurred during her sickness and confinement, together with all costs of the suit, for which costs execution shall issue as in other cases. And the accused shall be required by said court to give bond, with sufficient surety, to be approved by the judge of said court, for the payment of such sums of money as shall be so ordered by said court. Said bond shall be made payable to the people of the state of Washington, and conditioned for the true and faithful payment of such yearly sums, in equal quarterly installments, to the clerk of said court, which said bond shall be filed and preserved by the clerk of said court.

Bond securing payment in quarterly instalments.

Act cumulative with criminal proceedings.

SEC. 10. In addition to the proceedings for enforcing the support of the child heretofore provided for, the accused may be prosecuted in any criminal proceeding now or hereafter to be provided for by the laws of the state of Washington, relating to the support of minor children by parents or other persons upon whom such children may be dependent for care, education or support.

Execution in absence of security bond.

SEC. 11. If the accused shall fail or refuse to give such a bond as may be required by such superior court by virtue of the provisions of section nine, such court shall at any time thereafter, upon application of the mother or guardian, render judgment

against the accused for any sum or sums then due and unpaid under the terms of such order and judgment, and execution thereon shall issue from said court; *Provided*, That the rendition and collection of judgment as aforesaid shall not be construed to bar or hinder the taking of similar proceedings for the collection of judgment for the nonpayment of any sum or sums becoming due and unpaid thereafter.

SEC. 12. If the accused shall refuse and neglect to give such security as may be ordered by the court, under the provisions of section nine, he shall be committed to the county jail for contempt of court, there to remain until he shall comply with such order, or until otherwise discharged by due course of law. Any person so committed may at any time petition the court for a hearing as to his inability to comply with the order of the court and the court shall thereupon fix a time for the hearing of such petition which hearing shall be not less than ten days after the date of service of said petition on the prosecuting attorney. The prosecuting attorney may however waive the said ten day period in whole or in part. At the hearing the defendant shall be examined on oath in reference to the facts set forth in such petition and his ability to comply with such judgment and order, and any other legal evidence in reference to such matters may be produced by any of the parties interested. If it appears that the defendant is unable to comply with such judgment and order, the court may direct his discharge from custody, upon his making affidavit that he has not in his own name any property, real or personal, and has no such property conveyed or concealed, or in any manner disposed of with design to secure the same to his use or to avoid in any manner compliance with such judgment and order. If upon such hearing it appears that the defendant has property, but

Commitment for contempt.

Hearing upon question of inability to support.

not sufficient to comply with such judgment and order, the court may make such order concerning the same, in connection with such discharge, as justice may require.

Disposition
of judgment
money.

SEC. 13. The judgment money, when received by said clerk either by payment by the accused or by execution against the accused or against the sureties, shall be paid to the mother or guardian of such child, if a guardian therefor be appointed, and shall be laid out for the support, care and education of such child in such manner as shall be directed by the court.

Default in
paying in-
stalments.

SEC. 14. Whenever default shall be made in the payment of the quarterly installments, or any part thereof, specified in the bond provided for in section nine, the superior court of the county wherein such bond is filed shall, at the request of the mother, guardian, or any person interested in the support of such child, issue a citation to the principal or sureties in such bond requiring them to appear on some day in said citation mentioned and show cause, if any there be, why execution should not issue against them for the amount of the installment or installments due and unpaid on said bond. And if the amount due on such installment or installments shall not be paid at or before the time mentioned for showing cause, as aforesaid, such court shall render judgment in favor of the people of the state of Washington, and the complainant or guardian, against the principal and sureties who have been served with such citation for the amount unpaid of the installment or installments on the bond, and the cost of such proceeding, and execution shall issue in due form from said court upon said judgment.

Judgment
against de-
fendant and
sureties.

Commit-
ment for
contempt.

SEC. 15. Such court shall also have the power, in case the accused does not obey the order thereof, and in case of default in the payment when due, of any installment or installments, or any part thereof,

in the conditions of the said bond mentioned, to adjudge the accused guilty of contempt of court by reason of the nonpayment as aforesaid, and order him to be committed to the county jail in such county until the amount of said installment or installments so due shall be fully paid, together with all the costs of such commitment, but the commitment of the accused shall not operate to stay or defeat the obtaining of judgment and collection thereof by execution: *Provided*, that the rendition and collection of judgment, as aforesaid, shall not be construed to bar or hinder the taking of similar proceedings for the collection of subsequent installments on said bond as they shall become due or remain unpaid. *Provided further*, that any judgment entered herein may be modified at any time upon proper showing to the court.

Modification
of judgments.

SEC. 16. No prosecution under this act shall be brought after two years from the birth of the child: *Provided*, the time during which any person accused shall be absent from the state shall not be computed.

Limitation
on prosecution.

SEC. 17. The death of the mother shall not abate the proceeding, if the child be living; but a suggestion of record of the fact shall be made, and the testimony of the mother taken in writing before aforesaid justice may be read in evidence by either party, and shall have the same force as though she were living and had testified to the same in court.

Mother's
death not
to abate
action.

SEC. 18. The death of such child shall not cause the abatement or bar to any prosecution hereunder; but the court trying the same, on conviction, shall give judgment for such sum as shall be deemed just.

Judgment in
case of
child's death.

SEC. 19. If the mother be a suitable person she shall be awarded the custody and control of said child; if she be not a suitable person, the court may deliver the care and custody of said child to any

Custody
of child.



- Inside the Legislature
- ★ Find Your Legislator
- ★ Visiting the Legislature
- ★ Agendas, Schedules and Calendars
- ★ Bill Information
- ★ Laws and Agency Rules
- ★ Legislative Committees
- ★ Legislative Agencies
- ★ Legislative Information Center
- ★ E-mail Notifications
- ★ Civic Education
- ★ History of the State Legislature
- Outside the Legislature
- ★ Congress - the Other Washington
- ★ TVW
- ★ Washington Courts
- ★ OFM Fiscal Note Website

RCWs > Dispositions > Title 26 > Chapter 26.26

Chapter 26.26.060 RCW Dispositions UNIFORM PARENTAGE ACT

Sections

- 26.26.010 "Parent and child relationship" defined.**
[1975-'76 2nd ex.s. c 42 § 2.]
Repealed by 2002 c 302 § 711.
- 26.26.020 Relationship not dependent on marriage.**
[1975-'76 2nd ex.s. c 42 § 3.]
Repealed by 2002 c 302 § 711.
- 26.26.030 How parent and child relationship established.**
[2002 c 13 § 1; 1985 c 7 § 86; 1975-'76 2nd ex.s. c 42 § 4.]
Repealed by 2002 c 302 § 711.
- 26.26.035 Default.**
[1994 c 230 § 13.]
Repealed by 2002 c 302 § 711.
- 26.26.040 Presumption of paternity.**
[1997 c 58 § 938; 1994 c 230 § 14; 1990 c 175 § 2; 1989 c 55 § 4; 1975-'76 2nd ex.s. c 42 § 5.]
Repealed by 2002 c 302 § 711.
- 26.26.050 Artificial insemination.**
[2002 c 13 § 2; 1975-'76 2nd ex.s. c 42 § 6.]
Repealed by 2002 c 302 § 711.
- 26.26.060 Determination of father and child relationship — Who may bring action — When action may be brought.**
[1983 1st ex.s. c 41 § 5; 1975-'76 2nd ex.s. c 42 § 7.]
Repealed by 2002 c 302 § 711.
- 26.26.070 Determination of father and child relationship — Petition to arrest alleged father — Warrant of arrest — Issuance — Grounds — Hearing.**
[1975-'76 2nd ex.s. c 42 § 8.]
Repealed by 2002 c 302 § 711.
- 26.26.080 Jurisdiction — Venue.**
[1975-'76 2nd ex.s. c 42 § 9.]
Repealed by 2002 c 302 § 711.
- 26.26.090 Parties.**
[1984 c 260 § 31; 1983 1st ex.s. c 41 § 6; 1975-'76 2nd ex.s. c 42 § 10.]
Repealed by 2002 c 302 § 711.



26.26.100 Blood or genetic tests.

[1997 c 58 § 946. Prior: 1994 c 230 § 15; 1994 c 146 § 1; 1984 c 260 § 32; 1983 1st ex.s. c 41 § 7; 1975-'76 2nd ex.s. c 42 § 11.]
Repealed by 2002 c 302 § 711.

26.26.110 Evidence relating to paternity.

[1994 c 146 § 2; 1984 c 260 § 33; 1975-'76 2nd ex.s. c 42 § 12.]
Repealed by 2002 c 302 § 711.

26.26.120 Civil action — Testimony — Evidence — Jury.

[1994 c 146 § 3; 1984 c 260 § 34; 1975-'76 2nd ex.s. c 42 § 13.]
Repealed by 2002 c 302 § 711.

26.26.131 Child support schedule.

[1988 c 275 § 16.]
Repealed by 1989 c 360 § 42.

26.26.137 Temporary support — Temporary restraining order — Preliminary injunction — Domestic violence or antiharassment protection order — Notice of modification or termination of restraining order — Support debts, notice.

[2000 c 119 § 11; 1995 c 246 § 32; 1994 sp.s. c 7 § 456; 1983 1st ex.s. c 41 § 12.]
Repealed by 2002 c 302 § 711.

26.26.170 Action to determine mother and child relationship.

[1975-'76 2nd ex.s. c 42 § 18.]
Repealed by 2002 c 302 § 711.

26.26.180 Promise to render support.

[1983 1st ex.s. c 41 § 9; 1975-'76 2nd ex.s. c 42 § 19.]
Repealed by 2002 c 302 § 711.

26.26.200 Hearing or trials to be in closed court — Records confidential.

[1983 1st ex.s. c 41 § 10; 1975-'76 2nd ex.s. c 42 § 21.]
Repealed by 2002 c 302 § 711.

26.26.900 Uniformity of application and construction.

[1975-'76 2nd ex.s. c 42 § 42.]
Repealed by 2002 c 302 § 711.

26.26.901 Short title.

[1975-'76 2nd ex.s. c 42 § 43.]
Repealed by 2002 c 302 § 711.

26.26.902 Application to pending actions or proceedings.

[1975-'76 2nd ex.s. c 42 § 45.]
Repealed by 1983 1st ex.s. c 41 § 44.

26.26.905 Severability — 1975-'76 2nd ex.s. c 42.

[1975-'76 2nd ex.s. c 42 § 44.]
Repealed by 2002 c 302 § 711.

1975-76
SESSION LAWS
OF THE
STATE OF WASHINGTON

2nd EXTRAORDINARY SESSION
FORTY-FOURTH LEGISLATURE

Convened July 18, 1975. Recessed July 21, 1975.
Reconvened Aug. 9, 1975. Recessed Aug. 9, 1975.
Reconvened Sept. 5, 1975. Recessed Sept. 6, 1975.
Reconvened Jan. 12, 1976. Adjourned sine die March 28, 1976.



Published at Olympia by the Statute Law Committee pursuant
to Chapter 6, Laws of 1969.

RICHARD O. WHITE
Code Reviser

NEW SECTION. Sec. 11. There is added to chapter 134, Laws of 1969 ex. sess. and to chapter 70.95 RCW a new section to read as follows:

If any provision of this 1976 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected.

Passed the Senate February 18, 1976.

Passed the House February 12, 1976.

Approved by the Governor February 21, 1976.

Filed in Office of Secretary of State February 21, 1976.

CHAPTER 42

[Engrossed Substitute Senate Bill No. 2243]

UNIFORM PARENTAGE ACT

AN ACT Relating to parentage; amending section 2, chapter 131, Laws of 1959 and RCW 4.28.185; amending section 11.02.005, chapter 145, Laws of 1965 and RCW 11.02.005; amending section 11.04.081, chapter 145, Laws of 1965 and RCW 11.04.081; amending section 6, page 405, Laws of 1854 as last amended by section 2388, Code of 1881 and RCW 26.04.060; amending section 3, chapter 291, Laws of 1955 as amended by section 2, chapter 134, Laws of 1973 and RCW 26.32-.030; amending section 4, chapter 291, Laws of 1955 as amended by section 3, chapter 134, Laws of 1973 and RCW 26.32.040; amending section 5, chapter 291, Laws of 1955 as amended by section 4, chapter 134, Laws of 1973 and RCW 26.32.050; amending section 7, chapter 291, Laws of 1955 and RCW 26.32.070; amending section 8, chapter 291, Laws of 1955 as amended by section 5, chapter 134, Laws of 1973 and RCW 26.32.080; amending section 6, chapter 134, Laws of 1973 and RCW 26.32.085; amending section 10, chapter 134, Laws of 1973 and RCW 26.32.300; amending section 11, chapter 134, Laws of 1973 and RCW 26.32.310; amending section 1, chapter 49, Laws of 1903 as amended by section 7, chapter 134, Laws of 1973 and RCW 26.37.010; amending section 8, chapter 134, Laws of 1973 and RCW 26.37.015; amending section 43.20.090, chapter 8, Laws of 1965 as last amended by section 1, chapter 25, Laws of 1970 ex. sess. and RCW 43.20.090; amending section 51.08.030, chapter 23, Laws of 1961 as last amended by section 1, chapter 65, Laws of 1972 ex. sess. and RCW 51.08.030; amending section 21, chapter 5, Laws of 1961 ex. sess. and RCW 70.58.095; amending section 6, chapter 159, Laws of 1945 as last amended by section 2, chapter 279, Laws of 1969 ex. sess. and RCW 70.58.200; amending section 1, chapter 133, Laws of 1939 as amended by section 1, chapter 12, Laws of 1943 and RCW 70.58-.210; adding a new chapter to Title 26 RCW; repealing sections 1 through 8, chapter 203, Laws of 1919 and RCW 26.24.010 through 26.24.080; repealing section 9, chapter 203, Laws of 1919, section 1, chapter 29, Laws of 1973 and RCW 26.24.090; repealing sections 10 through 18, chapter 203, Laws of 1919 and RCW 26.24.100 through 26.24.180; repealing section 19, chapter 203, Laws of 1919, section 1, chapter 134, Laws of 1973 and RCW 26.24.190; and repealing section 9, chapter 134, Laws of 1973 and RCW 26.28.110.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Section 1. There is added to Title 26 RCW a new chapter to read as set forth in sections 2 through 21 and in sections 42 through 45 of this 1976 amendatory act.

NEW SECTION. Sec. 2. As used in this chapter, "parent and child relationship" means the legal relationship existing between a child and his natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship.

NEW SECTION. Sec. 3. The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.

and the date of the insemination, and file the husband's consent with the registrar of vital statistics, where it shall be kept confidential and in a sealed file.

(2) The donor of semen provided to a licensed physician for use in artificial insemination of a woman other than the donor's wife is treated in law as if he were not the natural father of a child thereby conceived unless the donor and the woman agree in writing that said donor shall be the father. The agreement must be in writing and signed by the donor and the woman. The physician shall certify their signatures and the date of the insemination and file the agreement with the registrar of vital statistics, where it shall be kept confidential and in a sealed file.

(3) The failure of the licensed physician to perform any administrative act required by this section shall not affect the father and child relationship. All papers and records pertaining to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, are subject to inspection only in exceptional cases upon an order of the court for good cause shown.

NEW SECTION. Sec. 7. (1) A child, his natural mother, or a man presumed to be his father under section 5 of this 1976 amendatory act may bring an action

(a) at any time for the purpose of declaring the existence of the father and child relationship presumed under section 5 of this 1976 amendatory act; or

(b) for the purpose of declaring the nonexistence of the father and child relationship presumed under section 5 (1), (2), (3) or (4) of this 1976 amendatory act only if the action is brought within a reasonable time after obtaining knowledge of relevant facts. After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party.

(2) Any interested party or the department of social and health services or the state of Washington may bring an action at any time for the purpose of determining the existence or nonexistence of the father and child relationship.

(3) In an action brought by the state pursuant to this chapter, the state may be represented by either the prosecuting attorney for the county where the action is brought or by the attorney general.

(4) An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under section 5 of this 1976 amendatory act may be brought by the child, the mother or personal representative of the child, the department of social and health services, the state of Washington, the personal representative or a parent of the mother if the mother has died, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor. If a child has no presumed father under section 5 of this 1976 amendatory act and the action to determine the existence of the father and child relationship has not been brought and proceedings to adopt the child have not been instituted within one year after the child's birth, an action to determine the existence of the relationship may be brought promptly on behalf of the child by the department of social and health services or the state of Washington.

(5) Regardless of its terms, no agreement between an alleged or presumed father and the mother or child, shall bar an action under this section.

(6) If an action under this section is brought before the birth of the child, all proceedings may be stayed until after the birth, except service of process and discovery, including the taking of depositions to perpetuate testimony.

(7) No action may be brought by the department of social and health services to establish the duty of someone who is not a presumed parent under section 5 of this 1976 amendatory act to support a child after five years (a) from the date of the child's birth, or (b) from any date the alleged parent ceases to contribute to the care, education, and support of the child, as required by chapter 26.20 RCW, whichever is later: PROVIDED, That the time during which the alleged parent is absent from the state shall not be included in the time periods described above.

NEW SECTION. Sec. 8. (1) The petitioner in an action to determine the existence of the father and child relationship may petition the court to issue a warrant for the arrest of the alleged father at any stage of the proceeding including after a judgment has been entered. When such petition is filed, the court shall examine on oath the petitioner and any witnesses the court may require, take their statements, and cause the statements and the petition to be subscribed under oath by the person or persons making such.

(2) If it appears from such evidence that there is reasonable cause to believe that the father and child relationship exists as alleged in the petition the court shall issue a warrant for the arrest of the alleged father: PROVIDED, That in the case of a prejudgment petition, a warrant shall only be issued if there is reasonable cause to believe that: (a) The alleged father will not appear in response to a summons; or (b) the summons cannot be served; or (c) the alleged father is likely to leave the jurisdiction; or (d) the safety of the petitioner would be endangered if the warrant did not issue.

(3) In the case of a petition for the arrest of a person pursuant to the continuing jurisdiction of the court described in section 17 of this 1976 amendatory act or as an aid to enforcement of a judgment and order previously rendered under this chapter, a warrant shall issue only if there is reasonable cause to believe that: (a) The respondent is delinquent in complying with court's order and conceals himself or has absconded or absented himself from his usual place of abode in this state so that ordinary process of law may not be served upon him; or (b) the respondent has or is about to remove any of his property from this state with the intent to delay or otherwise frustrate the court's order; or (c) the respondent has or is about to assign, secrete, convert, or dispose of any of his property with the intent to delay or otherwise frustrate the court's order.

(4) Any person arrested pursuant to this section shall be entitled upon request to a preliminary hearing as soon as practically possible, and in any event not later than the close of business of the next judicial day following the day of arrest. The court may, for good cause stated, enlarge the time prior to preliminary hearing.

(5) If a person arrested pursuant to this section is not afforded a preliminary hearing upon request as required by subsection (4) of this section, the court shall order such person brought before the court forthwith, and in default thereof, the court shall order his immediate release unless good cause to the contrary be shown.

(6) Any person arrested pursuant to this section shall at this first court appearance be ordered released on his personal recognizance pending trial, unless

That no information shall be required on the certificate of live birth relative to the education of the parents of the child. The Washington state board of health by regulation may require additional pertinent information relative to the birth and manner of delivery as it may deem necessary for statistical study. This information shall be placed in a confidential section of the birth certificate form (~~together with the item pertaining to illegitimacy~~) and shall not be subject to the view of the public or for certification purposes except upon order of a court: PROVIDED, That the state board of health may eliminate from the forms any such items that it determines are not necessary for statistical study.

Sec. 40. Section 1, chapter 133, Laws of 1939 as amended by section 1, chapter 12, Laws of 1943 and RCW 70.58.210 are each amended to read as follows:

Whenever a decree of adoption has been entered declaring a child, born in the state of Washington, adopted in any court of competent jurisdiction in the state of Washington or any other state, a certified copy of the decree of adoption shall be recorded with the proper department of registration of births in the state of Washington and a certificate of birth shall issue upon request, bearing the new name of the child as shown in the decree of adoption, the names of the foster parents of the said child, age, sex, date of birth, but no reference in any birth certificate shall have reference to the adoption of the said child. However, original registration of births shall remain a part of the record of the said board of health (~~PROVIDED, HOWEVER, There shall be no difference in the color of birth registration cards or certificates, whether the child be legitimate or illegitimate~~).

NEW SECTION. Sec. 41. The following acts or parts of acts are each repealed:

- (1) Sections 1 through 8, chapter 203, Laws of 1919 and RCW 26.24.010 through 26.24.080;
- (2) Section 9, chapter 203, Laws of 1919, section 1, chapter 29, Laws of 1973 and RCW 26.24.090;
- (3) Sections 10 through 18, chapter 203, Laws of 1919 and RCW 26.24.100 through 26.24.180;
- (4) Section 19, chapter 203, Laws of 1919, section 1, chapter 134, Laws of 1973 and RCW 26.24.190; and
- (5) Section 9, chapter 134, Laws of 1973 and RCW 26.28.110.

NEW SECTION. Sec. 42. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

NEW SECTION. Sec. 43. This act may be cited as the Uniform Parentage Act.

NEW SECTION. Sec. 44. If any provision of this 1976 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 45. The provisions of this 1976 amendatory act shall apply to all actions or proceedings which shall have been commenced at the date this act becomes effective, except that the provisions of section 13(5) of this act

1983
SESSION LAWS
OF THE
STATE OF WASHINGTON

REGULAR SESSION
FORTY-EIGHTH LEGISLATURE
Convened January 10, 1983. Adjourned April 24, 1983.

1st EXTRAORDINARY SESSION
FORTY-EIGHTH LEGISLATURE
Convened April 25, 1983. Adjourned May 24, 1983.

2nd EXTRAORDINARY SESSION
FORTY-EIGHTH LEGISLATURE
Convened May 25, 1983. Adjourned May 25, 1983.



Published at Olympia by the Statute Law Committee pursuant to Chapter
6, Laws of 1969.

DENNIS W. COOPER
Code Reviser

NEW SECTION. Sec. 25. Sections 1 through 21 of this act shall constitute a new chapter in Title 43 RCW.

Passed the Senate May 11, 1983.

Passed the House May 10, 1983.

Approved by the Governor May 19, 1983.

Filed in Office of Secretary of State May 19, 1983.

CHAPTER 41

[Reengrossed Substitute Senate Bill No. 3660]

DEPARTMENT OF SOCIAL AND HEALTH SERVICES—CHILD SUPPORT PROCEDURES—PARENTAGE—CORRECTIONAL INSTITUTION FOR JUVENILES

AN ACT Relating to social and health services; amending section 6, chapter 157, Laws of 1973 1st ex. sess. as last amended by section 10, chapter ... (SSB 3782), Laws of 1983 and RCW 26.09.060; amending section 10, page 452, Laws of 1873 as last amended by section 1, chapter 121, Laws of 1969 ex. sess. and RCW 26.16.200; amending section 2, chapter 161, Laws of 1979 ex. sess. as last amended by section 2, chapter (SB 4204), Laws of 1983 and RCW 70.38.025; amending section 12, chapter 164, Laws of 1971 ex. sess. and RCW 74.20A.120; amending section 25, chapter 264, Laws of 1969 ex. sess. and RCW 7.33.250; amending section 7, chapter 42, Laws of 1975-'76 2nd ex. sess. and RCW 26.26.060; amending section 10, chapter 42, Laws of 1975-'76 2nd ex. sess. and RCW 26.26.090; amending section 11, chapter 42, Laws of 1975-'76 2nd ex. sess. and RCW 26.26.100; amending section 14, chapter 42, Laws of 1975-'76 2nd ex. sess. and RCW 26.26.130; amending section 19, chapter 42, Laws of 1975-'76 2nd ex. sess. and RCW 26.26.180; amending section 21, chapter 42, Laws of 1975-'76 2nd ex. sess. and RCW 26.26.200; amending section 21, chapter 5, Laws of 1961 ex. sess. as amended by section 38, chapter 42, Laws of 1975-'76 2nd ex. sess. and RCW 70.58.095; amending section 13, chapter 206, Laws of 1963 as amended by section 370, chapter 141, Laws of 1979 and RCW 74.20.280; amending section 28A.10.080, chapter 223, Laws of 1969 ex. sess. as last amended by section 11, chapter 151, Laws of 1979 and RCW 28A.10.080; amending section 6, chapter 224, Laws of 1982 and RCW 71.20.016; amending section 2, chapter 102, Laws of 1967 ex. sess. as amended by section 47, chapter 141, Laws of 1979 and RCW 43.20A.605; amending section 74.04.290, chapter 26, Laws of 1959 as last amended by section 2, chapter 171, Laws of 1979 ex. sess. and RCW 74.04.290; amending section 10, chapter 152, Laws of 1979 ex. sess. and RCW 74.09.290; amending section 5, chapter 228, Laws of 1979 ex. sess. and RCW 70.124.050; amending section 72.01.060, chapter 28, Laws of 1959 as amended by section 146, chapter 141, Laws of 1979 and RCW 72.01.060; amending section 3, chapter 165, Laws of 1963 as amended by section 224, chapter 141, Laws of 1979 and RCW 72.19.030; amending section 72.23.030, chapter 28, Laws of 1959 as amended by section 2, chapter 56, Laws of 1969 and RCW 72.23.030; amending section 3, chapter 18, Laws of 1967 ex. sess. as amended by section 55, chapter 80, Laws of 1977 ex. sess. and RCW 72.30.030; amending section 72.33.040, chapter 28, Laws of 1959 as last amended by section 12, chapter 217, Laws of 1979 ex. sess. and RCW 72.33.040; amending section 74.04.060, chapter 26, Laws of 1959 as amended by section 1, chapter 152, Laws of 1973 and RCW 74.04.060; amending section 1, chapter 6, Laws of 1981 1st ex. sess. as amended by section 5, chapter 10, Laws of 1981 2nd ex. sess. and RCW 74.04.005; amending section 3, chapter 10, Laws of 1973 2nd ex. sess. as last amended by section 7, chapter 6, Laws of 1981 1st ex. sess. and RCW 74.04.620; amending section 4, chapter 10, Laws of 1981 2nd ex. sess. and RCW 74.04.770; amending section 17, chapter 6, Laws of 1981 1st ex. sess. and RCW 74.08.541; amending section 74.12.010, chapter 26, Laws of 1959 as last amended by section 23, chapter 6, Laws of 1981 1st ex. sess. and RCW 74.12.010; adding new sections to chapter 26.26 RCW; adding a new section to chapter 4.16 RCW; adding new sections to chapter 43.20A RCW; adding new sections to chapter 74.04 RCW; adding a new section to chapter 74.20 RCW; creating a new section; repealing section 45, chapter 42, Laws of 1975-'76 2nd ex. sess.

for the satisfaction of debts incurred by her prior to marriage. For the purpose of this section, neither the husband nor the wife shall be construed to have any interest in the earnings of the other: **PROVIDED FURTHER, That no separate debt, except a child support or maintenance obligation, may be the basis of a claim against the earnings and accumulations of either a husband or wife unless the same is reduced to judgment within three years of the marriage of the parties. The obligation of a parent or stepparent to support a child may be collected out of the parent's or stepparent's separate property, the parent's or stepparent's earnings and accumulations, and the parent's or stepparent's share of community personal and real property. Funds in a community bank account which can be identified as the earnings of the nonobligated spouse are exempt from satisfaction of the child support obligation of the debtor spouse.**

Sec. 3. Section 12, chapter 164, Laws of 1971 ex. sess. and RCW 74-.20A.120 are each amended to read as follows:

In the case of a bank, bank association, mutual savings bank, or savings and loan association maintaining branch offices, service of a lien or order to withhold and deliver or any other notice or document authorized by this chapter shall only be effective as to the accounts, credits, or other personal property of the debtor in the particular branch upon which service is made.

If the department initiates collection action under this chapter against a community bank account, the debtor or the debtor's spouse, upon service on the department of a timely request, shall have a right to a contested hearing under chapter 34.04 RCW to establish that the funds in the account, or a portion of those funds, were the earnings of the nonobligated spouse, and are exempt from the satisfaction of the child support obligation of the debtor pursuant to RCW 26.16.200.

Sec. 4. Section 25, chapter 264, Laws of 1969 ex. sess. and RCW 7.33-.250 are each amended to read as follows:

The defendant may also in like manner controvert the answer of the garnishee and claim the exemption provided by RCW 26.16.200.

Sec. 5. Section 7, chapter 42, Laws of 1975-'76 2nd ex. sess. and RCW 26.26.060 are each amended to read as follows:

(1) (a) A child, ((his)) a child's natural mother, ((or a man presumed to be his father under RCW 26.26.040)) a man alleged or alleging himself to be the father, a child's guardian, a child's personal representative, the state of Washington, or any interested party may bring an action ((a)) at any time for the purpose of declaring the existence or nonexistence of the father and child relationship ((presumed under RCW 26.26.040, or)).

(b) A man presumed to be a child's father under RCW 26.26.040 may bring an action for the purpose of declaring the nonexistence of the father and child relationship ((presumed under RCW 26.26.040 (1), (2), (3) or (4))) only if the action is brought within a reasonable time after obtaining

Ch. 41 WASHINGTON LAWS, 1983 1st Ex. Sess.

knowledge of relevant facts. After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party.

~~(2) ((Any interested party or the department of social and health services or the state of Washington may bring an action at any time for the purpose of determining the existence or nonexistence of the father and child relationship.~~

~~(3))~~ (3)) In an action brought by the state pursuant to this chapter, the state may be represented by either the prosecuting attorney for the county where the action is brought or by the attorney general.

~~((4) An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under RCW 26.26.040 may be brought by the child, the mother or personal representative of the child, the department of social and health services, the state of Washington, the personal representative or a parent of the mother if the mother has died, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor. If a child has no presumed father under RCW 26.26.040 and the action to determine the existence of the father and child relationship has not been brought and proceedings to adopt the child have not been instituted within one year after the child's birth, an action to determine the existence of the relationship may be brought promptly on behalf of the child by the department of social and health services or the state of Washington.~~

~~(5))~~ (3) Regardless of its terms, no agreement between an alleged or presumed father and the mother or child, shall bar an action under this section.

~~((6))~~ (4) If an action under this section is brought before the birth of the child, all proceedings may be stayed until after the birth, except service of process and discovery, including the taking of depositions to perpetuate testimony.

~~((7) No action may be brought by the department of social and health services to establish the duty of someone who is not a presumed parent under RCW 26.26.040 to support a child after five years (a) from the date of the child's birth, or (b) from any date the alleged parent ceases to contribute to the care, education, and support of the child, as required by chapter 26.20 RCW, whichever is later. PROVIDED, That the time during which the alleged parent is absent from the state shall not be included in the time periods described above:))~~

(5) Actions under this chapter may be maintained as to any child, whether born before or after the enactment of this chapter.

Sec. 6. Section 10, chapter 42, Laws of 1975-'76 2nd ex. sess. and RCW 26.26.090 are each amended to read as follows:

The child shall be made a party to the action. If ~~((he))~~ the child is a minor ~~((he))~~, the child shall be represented by ~~((his))~~ the child's general guardian or a guardian ad litem appointed by the court subject to RCW 74.20.310. The child's mother or father may not represent the child as guardian or otherwise. The natural mother, each man presumed to be the father under RCW 26.26.040, and each man alleged to be the natural father, shall be made parties or, if not subject to the jurisdiction of the court, shall be given notice of the action in a manner prescribed by the court and an opportunity to be heard. The court may align the parties.

Sec. 7. Section 11, chapter 42, Laws of 1975-'76 2nd ex. sess. and RCW 26.26.100 are each amended to read as follows:

(1) The court may, and upon request of a party shall, require the child, mother, and a presumed or alleged father to submit to blood tests. The tests shall be performed by an expert ~~((qualified as an examiner of blood types;))~~ in paternity blood testing appointed by the court.

(2) The court, upon reasonable request by a party, shall order that ~~((independent))~~ additional blood tests be performed by other experts qualified ~~((as examiner of blood types))~~ in paternity blood testing.

(3) In all cases, the court shall determine the number and qualifications of the experts.

Sec. 8. Section 14, chapter 42, Laws of 1975-'76 2nd ex. sess. and RCW 26.26.130 are each amended to read as follows:

(1) The judgment and order of the court determining the existence or nonexistence of the parent and child relationship ~~((is))~~ shall be determinative for all purposes.

(2) If the judgment and order of the court is at variance with the child's birth certificate, the court shall order that an amended birth certificate be issued.

(3) The judgment and order ~~((may))~~ shall contain ~~((any))~~ other appropriate provisions directed ~~((against))~~ to the appropriate ~~((party))~~ parties to the proceeding, concerning the duty of current and future support, the extent of any liability for past support furnished to the child if that issue is before the court, the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. The judgment and order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.

(4) Support judgment and orders shall be for periodic payments which may vary in amount. The court may limit the father's liability for the past support to the child to the proportion of the expenses already incurred as the court deems just: PROVIDED HOWEVER, That the court shall not limit or affect in any manner the right of nonparties including the state of Washington to seek reimbursement for support and other services previously furnished to the child.

2002

SESSION LAWS

OF THE

STATE OF WASHINGTON

REGULAR SESSION
FIFTY-SEVENTH LEGISLATURE
Convened January 14, 2002. Adjourned March 14, 2002.



Published at Olympia by the Statute Law Committee under
Chapter 6, Laws of 1969.

GARY REID
Acting Code Reviser

<http://slc.leg.wa.gov>

Passed the House March 12, 2002.

Passed the Senate March 7, 2002.

Approved by the Governor April 2, 2002.

Filed in Office of Secretary of State April 2, 2002.

CHAPTER 302

[Second Substitute House Bill 2346]

UNIFORM PARENTAGE ACT

AN ACT Relating to the uniform parentage act; amending RCW 5.44.140, 5.62.030, 9.41.070, 9.41.800, 74.20.310, 74.20.360, 74.20A.056, and 70.58.080; adding new sections to chapter 26.26 RCW; repealing RCW 26.26.010, 26.26.020, 26.26.030, 26.26.035, 26.26.040, 26.26.050, 26.26.060, 26.26.070, 26.26.080, 26.26.090, 26.26.100, 26.26.110, 26.26.120, 26.26.137, 26.26.170, 26.26.180, 26.26.200, 26.26.900, 26.26.901, and 26.26.905; prescribing penalties; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

ARTICLE 1

GENERAL PROVISIONS

NEW SECTION. Sec. 101. SHORT TITLE. This act may be known and cited as the uniform parentage act.

NEW SECTION. Sec. 102. DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Acknowledged father" means a man who has established a father-child relationship under sections 301 through 316 of this act.

(2) "Adjudicated father" means a man who has been adjudicated by a court of competent jurisdiction to be the father of a child.

(3) "Alleged father" means a man who alleges himself to be, or is alleged to be, the genetic father or a possible genetic father of a child, but whose paternity has not been determined. The term does not include:

(a) A presumed father;

(b) A man whose parental rights have been terminated or declared not to exist;

or

(c) A male donor.

(4) "Assisted reproduction" means a method of causing pregnancy other than sexual intercourse. The term includes:

(a) Intrauterine insemination;

(b) Donation of eggs;

(c) Donation of embryos;

(d) In vitro fertilization and transfer of embryos; and

(e) Intracytoplasmic sperm injection.

(5) "Child" means an individual of any age whose parentage may be determined under this chapter.

(6) "Commence" means to file the petition seeking an adjudication of parentage in a superior court of this state or to serve a summons and the petition.

(3) An intended parent under a surrogate parentage contract, as provided in RCW 26.26.210 through 26.26.260.

NEW SECTION. Sec. 504. PERSONAL JURISDICTION. (1) An individual may not be adjudicated to be a parent unless the court has personal jurisdiction over the individual.

(2) A court of this state having jurisdiction to adjudicate parentage may exercise personal jurisdiction over a nonresident individual, or the guardian or conservator of the individual, if the conditions prescribed in RCW 26.21.075 are fulfilled.

(3) Lack of jurisdiction over one individual does not preclude the court from making an adjudication of parentage binding on another individual over whom the court has personal jurisdiction.

NEW SECTION. Sec. 505. VENUE. Venue for a proceeding to adjudicate parentage is in the county of this state in which:

(1) The child resides or is found;

(2) The respondent resides or is found if the child does not reside in this state;

or

(3) A proceeding for probate of the presumed or alleged father's estate has been commenced.

NEW SECTION. Sec. 506. NO LIMITATION: CHILD HAVING NO PRESUMED, ACKNOWLEDGED, OR ADJUDICATED FATHER. A proceeding to adjudicate the parentage of a child having no presumed, acknowledged, or adjudicated father may be commenced at any time during the life of the child, even after:

(1) The child becomes an adult; or

(2) An earlier proceeding to adjudicate paternity has been dismissed based on the application of a statute of limitation then in effect.

NEW SECTION. Sec. 507. LIMITATION: CHILD HAVING PRESUMED FATHER. (1) Except as otherwise provided in subsection (2) of this section, a proceeding brought by a presumed father, the mother, or another individual to adjudicate the parentage of a child having a presumed father must be commenced not later than two years after the birth of the child.

(2) A proceeding seeking to disprove the father-child relationship between a child and the child's presumed father may be maintained at any time if the court determines that:

(a) The presumed father and the mother of the child neither cohabited nor engaged in sexual intercourse with each other during the probable time of conception; and

(b) The presumed father never openly treated the child as his own.

NEW SECTION. Sec. 508. AUTHORITY TO DENY GENETIC TESTING. (1) In a proceeding to adjudicate parentage under circumstances described in

~~(iv) Written information, furnished by the department of social and health services, explaining the implications of signing, including parental rights and responsibilities, and~~

~~(v) The social security numbers of both parents)) be prepared as required by section 302 of this act.~~

(b) Provide written information and oral information, furnished by the department of social and health services, to the mother and the father regarding the benefits of having the child's paternity established and of the availability of paternity establishment services, including a request for support enforcement services. The oral and written information shall also include information regarding the alternatives to, the legal consequences of, and the rights, including, if one parent is a minor any rights afforded due to minority status, and responsibilities that arise from, signing the ~~((affidavit acknowledging))~~ acknowledgment of paternity.

(5) The physician or midwife or his or her agent is entitled to reimbursement for reasonable costs, which the department shall establish by rule, when an ~~((affidavit acknowledging))~~ acknowledgment of paternity is filed with the state registrar of vital statistics.

(6) If there is no attending physician or midwife, the father or mother of the child, householder or owner of the premises, manager or superintendent of the public or private institution in which the birth occurred, shall notify the local registrar, within ten days after the birth, of the fact of the birth, and the local registrar shall secure the necessary information and signature to make a proper certificate of birth.

(7) When an infant is found for whom no certificate of birth is known to be on file, a birth certificate shall be filed within the time and in the form prescribed by the state board of health.

(8) When no ~~((putative))~~ alleged father is named on a birth certificate of a child born to an unwed mother the mother may give any surname she so desires to her child but shall designate in space provided for father's name on the birth certificate "None Named".

NEW SECTION. Sec. 709. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

NEW SECTION. Sec. 710. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 711. The following acts or parts of acts are each repealed:

(1) RCW 26.26.010 ("Parent and child relationship" defined) and 1975-76 2nd ex.s. c 42 s 2;

- (2) RCW 26.26.020 (Relationship not dependent on marriage) and 1975-'76 2nd ex.s. c 42 s 3;
- (3) RCW 26.26.030 (How parent and child relationship established) and 2002 c ... (SSB 5433) s 1, 1985 c 7 s 86, & 1975-'76 2nd ex.s. c 42 s 4;
- (4) RCW 26.26.035 (Default) and 1994 c 230 s 13;
- (5) RCW 26.26.040 (Presumption of paternity) and 1997 c 58 s 938, 1994 c 230 s 14, 1990 c 175 s 2, 1989 c 55 s 4, & 1975-'76 2nd ex.s. c 42 s 5;
- (6) RCW 26.26.050 (Artificial insemination) and 2002 c ... (SSB 5433) s 2 & 1975-'76 2nd ex.s. c 42 s 6;
- (7) RCW 26.26.060 (Determination of father and child relationship—Who may bring action—When action may be brought) and 1983 1st ex.s. c 41 s 5 & 1975-'76 2nd ex.s. c 42 s 7;
- (8) RCW 26.26.070 (Determination of father and child relationship—Petition to arrest alleged father—Warrant of arrest—Issuance—Grounds—Hearing) and 1975-'76 2nd ex.s. c 42 s 8;
- (9) RCW 26.26.080 (Jurisdiction—Venue) and 1975-'76 2nd ex.s. c 42 s 9;
- (10) RCW 26.26.090 (Parties) and 1984 c 260 s 31, 1983 1st ex.s. c 41 s 6, & 1975-'76 2nd ex.s. c 42 s 10;
- (11) RCW 26.26.100 (Blood or genetic tests) and 1997 c 58 s 946;
- (12) RCW 26.26.110 (Evidence relating to paternity) and 1994 c 146 s 2, 1984 c 260 s 33, & 1975-'76 2nd ex.s. c 42 s 12;
- (13) RCW 26.26.120 (Civil action—Testimony—Evidence—Jury) and 1994 c 146 s 3, 1984 c 260 s 34, & 1975-'76 2nd ex.s. c 42 s 13;
- (14) RCW 26.26.137 (Temporary support—Temporary restraining order—Preliminary injunction—Domestic violence or antiharassment protection order—Notice of modification or termination of restraining order—Support debts, notice) and 2000 c 119 s 11, 1995 c 246 s 32, 1994 sp.s. c 7 s 456, & 1983 1st ex.s. c 41 s 12;
- (15) RCW 26.26.170 (Action to determine mother and child relationship) and 1975-'76 2nd ex.s. c 42 s 18;
- (16) RCW 26.26.180 (Promise to render support) and 1983 1st ex.s. c 41 s 9 & 1975-'76 2nd ex.s. c 42 s 19;
- (17) RCW 26.26.200 (Hearing or trials to be in closed court—Records confidential) and 1983 1st ex.s. c 41 s 10 & 1975-'76 2nd ex.s. c 42 s 21;
- (18) RCW 26.26.900 (Uniformity of application and construction) and 1975-'76 2nd ex.s. c 42 s 42;
- (19) RCW 26.26.901 (Short title) and 1975-'76 2nd ex.s. c 42 s 43; and
- (20) RCW 26.26.905 (Severability—1975-'76 2nd ex.s. c 42) and 1975-'76 2nd ex.s. c 42 s 44.

NEW SECTION. Sec. 712. TRANSITIONAL PROVISION. A proceeding to adjudicate parentage which was commenced before the effective date of this section is governed by the law in effect at the time the proceeding was commenced.

RCW 26.26.530

Proceeding to adjudicate parentage — Time limitation: Child having presumed parent.

(1) Except as otherwise provided in subsection (2) of this section, a proceeding brought by a presumed parent, the person with a parent-child relationship with the child, or another individual to adjudicate the parentage of a child having a presumed parent must be commenced not later than four years after the birth of the child. If an action is commenced more than two years after the birth of the child, the child must be made a party to the action.

(2) A proceeding seeking to disprove the parent-child relationship between a child and the child's presumed parent may be maintained at any time if the court determines that the presumed parent and the person who has a parent-child relationship with the child neither cohabited nor engaged in sexual intercourse with each other during the probable time of conception and the presumed parent never held out the child as his or her own.

[2011 c 283 § 32; 2002 c 302 § 507.]

Notes:

Costs – Application – 2011 c 283: See notes following RCW 26.26.011.